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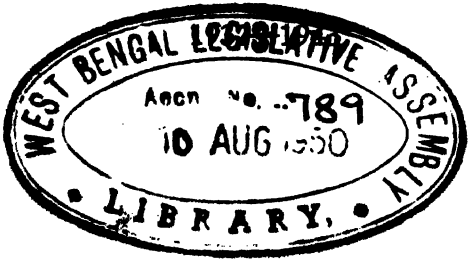
# Decisions of Speakers of the Legislative Assembly Bengal

VOLUME I

*Decisions of Mr. Speaker Azizul Haque and his deputy, Mr. Deputy Speaker Jalaluddin Hashemy*

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To

The Speaker

In whose hands the high tradition
of the Chair rests

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# PREFACE

Parliamentary procedure depends much upon practice, convention and precedents. Although with the introduction and growth of parliamentary Government in India, rules have been framed from time to time regarding the procedure of legislative bodies, much of the procedure is yet regulated by the interpretation put upon such rules and the practice and convention of the House concerned as embodied in the decisions and rulings given by the presiding officers, the Presidents or the Speakers on points of order. Consequently, whenever any point of order is raised, one has to search for precedents among the previous rulings of the Chair. In West Bengal, such rulings are scattered among more than three hundred volumes of the proceedings of the Legislature. The Central Legislature has published a selection of the rulings of the President of the Central Assembly. Some of the Provincial Legislatures also have

published the rulings of their Presidents or Speakers. The want of a compilation of the rulings of the Speakers of the Bengal Legislative Assembly had long been felt by successive Speakers and members of the Assembly as also by the Government and the officers of the Assembly Secretariat. But for various reasons the work could not be undertaken up till now. Due to the initiative and untiring effort of the present Speaker of the West Bengal Legislative Assembly, the Hon'ble Iswar Das Jalan, in this direction, the appointment of a Special Officer was sanctioned by the Government for this purpose.

The work of the compilation of the rulings of the Presidents and Speakers of the Bengal Legislative Assembly has been entrusted to Sj. Charu C. Chowdhuri, Advocate, who has been appointed as the Special Officer. He has made a special study of Constitutional Law and Parliamentary Practice and has had considerable

experience in this type of work having been associated for many years with the Calcutta Weekly Notes as one of the Assistant Editors. The first volume of the compilation which is now published begins from the coming into force of the Government of India Act, 1935, and contains the rulings of Mr. Speaker Azizul Haque and his Deputy, Mr. Jalaluddin Hashemy who presided over the deliberations of the Assembly after the resignation of Sir Azizul Haque till the election of Mr. Speaker Nausher Ali.

The rulings have not been printed *verbatim* but have been formulated as propositions of law extracted from the pronouncements of the Speaker and the proceedings of the Assembly and have been arranged alphabetically according to the subject matter for facility of reference. In this matter the method which obtains in regard to such compilations in England and the

Dominions of the British Commonwealth has been followed. Reference to the dates and the volumes and pages of the official proceedings of the Assembly are given so that if any one wishes, he may find the full report for reference. Reading through the proceedings and extracting legal propositions from the debates and pronouncements has entailed much labour and I am glad to record my appreciation of the thorough and accurate manner in which Sj. Chowdhuri has done the work.

It is contemplated to finish the compilation of the rulings given under the Government of India Act, 1935, before Independence, in three volumes, the first of which is now published, and the other two volumes will contain the rulings of Mr. Speaker Nausher Ali and Mr. Speaker Nurul Amin. The fourth volume will contain the rulings given by the present Speaker, the

Hon'ble Iswar Das Jalan, up till the inauguration of the Republic. It is proposed to publish the rulings under the Government of India Act, 1919, after these volumes.

I must respectfully and gratefully acknowledge the debt due to the Hon'ble Iswar Das Jalan, the present Speaker of the West Bengal Legislative Assembly, not only for his efforts in securing the appointment of a Special Officer except for which the publication of the rulings would not have been possible but also for the constant interest he took and for the guidance received from him in the work of the compilation itself.

A. R. MUKERJEA,
*Secretary, West Bengal Legislative Assembly.*

*The 25th February, 1950.*

# PART I

*Decisions of Mr. Speaker Azizul Haque.*
*7th April, 1937 to 27th April, 1942.*

# Decisions of Mr. Speaker Azizul Haque

## ADJOURNMENT OF HOUSE.

*Speaker, discretion of—House whether sitting when Presiding Officer absent.*

The matter of adjournment is entirely a matter within the discretion of the Speaker. If members desire to stay on after the House is adjourned by the Speaker, they may do so. But when the Presiding Officer is absent, the House is not sitting.

Progs: 24th April, 1939, Vol. LII, No. 5, p. 321.

## ADJOURNMENT MOTION.

### 1. ADMISSIBILITY.

*Discussion of matter otherwise possible—Matter capable of being discussed during budget discussion.*

Even though a matter can be discussed during the discussion on budget grants, the fact

that it may not be probable to do so will determine whether an adjournment motion should be allowed or not.

[Adjournment motion allowed.]

Progs: 16th August, 1937, Vol. LI, No. 2, p. 250.

*Discussion of matter otherwise possible—Same matter arising in connection with special motion.*

When the subject matter of an adjournment motion is likely to arise in connection with a special motion notice of which has been given, the adjournment motion will not be allowed.

Progs: 9th February, 1938, Vol. LII, No. 1, p. 77.

*Discussion of matter otherwise possible—Adjournment motion during Budget Session.*

An adjournment motion will not be allowed during the Budget Session unless the Speaker is satisfied that it does not violate any provision of the rules. An adjournment motion is always ruled out when it is possible to discuss a question in another form, that is to say, through the agency of a motion of which notice has already been given, e.g., a notice of motion in regard to the Police budget.

Progs: 9th March, 1938, Vol. LII, No. 4, p. 14.

*Discussion of matter otherwise possible—Matter which may be discussed under statutory right.*

When the House would have an opportunity of discussing a matter under a statutory right (in this case, the promulgation of Bengal Jute Ordinance which would have to be placed before the House under the law), it is against constitutional practice for an adjournment motion to be substituted in place of the statutory right.

Progs: 15th February, 1939, Vol. LIV, No. 1, p. 41.

*Discussion of matter otherwise possible.*

When an opportunity to discuss a matter in other normal ways is available, an adjournment motion is not usually permissible but every case has to be treated on its own merits and according to circumstances.

Progs: 28th November, 1939, Vol. LV, No. 1, p. 48.

*Discussion of matter otherwise possible—Matter capable of being discussed during budget discussion.*

An adjournment motion on a matter which may be discussed at the time when the budget

is discussed and the time for such discussion is at hand, an adjournment motion on such matter is out of order.

Progs: 27th February, 1941, Vol. LIX, No. 2, p. 130.

Progs: 5th March, 1941, Vol. LIX, No. 2, p. 349 and p. 350.

*Motion couched in language requesting action.*

An adjournment motion couched in the form of a request to the Government to take certain action is not in order.

Progs: 13th August, 1937, Vol. LI, No. 2, p. 214.

*Motion raising wide and general issues.*

A specific individual issue can only be raised in an adjournment motion. A motion raising a wide and general issue (e.g., in this case, repressive measures taken against the student community) is out of order.

Progs: 16th February, 1942, Vol. LXII, No. 1, p. 27.

*Speaker, whether judge of facts.*

When an adjournment motion is sought to be moved a question arises whether the Speaker is to judge the facts or whether it is for the House to decide the matter. Mr. Speaker gave the following ruling:—

"I promised to give a decision on the point as to whether the adjournment motion is in order or not. I have heard the statement which has been made by

the hon'ble mover as also the statement made by the Hon'ble the Chief Minister, and I feel that the motion is in order, for the reason that so far as the facts are concerned, there seems to be no difference substantially between the statement which has been made by the mover and that made by the Government. Whether from that statement a conclusion can be drawn that there is a failure of the Department of Law and Order to control the situation or not is a matter which is not for me to decide. I am merely to find out as to whether a *prima facie* case has been established by which a section of the House may hold that law and order has failed. Without entering into the question as to whether there has been a failure or not—it is not for me to decide but the House is the ultimate authority to decide—I hold the motion to be in order, and I will now ask if there is any objection to the motion being taken up."

Progs: 7th April, 1941, Vol. LIX, No. 6, pp. 131-141.

*Urgent matter of recent occurrence—continuance if necessary.*

The word "occurrence" itself assumes that the incident is a past one and the mere fact that the incident is not a continuing one does not necessarily involve that the matter is not of urgent public importance. The Speaker cannot go beyond the purport of the resolution itself but he has to be satisfied as to whether on the paper before him a *prima facie* question of urgent public importance has been raised.

Progs: 16th August, 1937, Vol. LI, No. 2, p. 250.

## 2. PROCEDURE.

*Procedure to follow.*

There are two things which are to be done when an adjournment motion is brought before the House. One is that the Speaker must give his consent and the second is that the Speaker must decide whether the motion is in order. The practice which is followed is that this consent is given outside the House but it is communicated to the mover. It is the function of the Speaker after consent is given and the motion is moved in the House to decide whether the motion is in order or not; that is to say the matter of giving consent would be decided outside the House and the matter as to whether the motion is in order or not would be decided in the House.

Progs: 21st March, 1938, Vol. LII, No. 5, p. 160.

*Contradiction of facts whether can be discussed in open House.*

Where there is a question of contradiction of facts in regard to the subject matter of an adjournment motion, it cannot be discussed in the open House.

Progs: 28th February, 1940, Vol. LVI, No. 2, p. 164.

*Opportunity to Government to furnish information.*

At the time of discussing an adjournment motion authentic official information should be available and an opportunity should also be given to obtain such information. In that view of the matter the Speaker allowed an adjournment motion to be taken up on the next day in order that official information might be available to enable the Speaker to come to a decision whether an adjournment motion was in order or not.

**Progs: 22nd August, 1938, Vol. LIII, No. 3, p. 285.**

*Official information not forthcoming.*

An adjournment motion can be ruled out on the ground that official information regarding the subject matter of the motion is not forthcoming but in order to obviate such consequences a statement is allowed to be made on the facts by the Government so that the Speaker may have an opportunity of assessing the statements of both sides.

**Progs: 7th April, 1941, Vol. LIX, No. 6, p. 118.**

*Reference to matters, when consent not given.*

When consent to an adjournment motion has not been given by the Speaker nothing in respect of such motion can be referred to in the House.

**Progs: 1st June, 1939, Vol. LIV, No. 9, p. 216.**

*Speaker, consent of—Speaker whether can consult other members.*

It is for the Speaker to decide whether he should give his consent to an adjournment motion in his chamber. But if any fact is to be elicited from the Government it must be done in the presence of the members who must have full opportunity to assess those facts. Whether an adjournment motion is in order or not may be decided by the Speaker after hearing every such person in the chamber as he may choose.

Progs: 21st March, 1938, Vol. LII, No. 5, p. 158.

*Speaker, consent of—Decision whether motion is in order or not.*

There are two stages when an adjournment motion is sought to be moved—one stage for the Speaker's consent and the second is for the Speaker to decide whether the motion is in order or not. When consent is given it does not *ipso facto* admit the motion. In considering the second stage the Speaker is entitled to hear the Government as to what they have got to say in regard to the matter.

Progs: 7th April, 1941, Vol. LIX, No. 6, p. 127.

*Speaker, function of.*

In dealing with an adjournment motion, the Speaker has two functions to perform; one is to give his consent to a matter being brought up before the House and the other, when the member actually brings up the matter before the House and asks for leave, to decide whether it is in order or not.

Progs: 13th August, 1937, Vol. LI, No. 2, p. 214.

*Written statement not supplied.*

Unless a written statement regarding an adjournment motion is submitted along with the notice of motion, the adjournment motion will be ruled out.

Progs: 9th February, 1938, Vol. LII, No. 1, p. 76.

*Written statement not attached but details appearing in motion itself.*

If the motion itself contains such details about the subject matter of an adjournment motion as are necessary for the written statement, the attaching of a written statement will not be insisted upon.

Progs: 22nd March, 1938, Vol. LII, No. 5, p. 206.

### 3. SUBJECT MATTER.

*Appointment of particular person as Chairman of a Commission.*

Where there had been a debate "to raise a discussion on the constitution and terms of reference of the Revenue Enquiry Commission" an adjournment motion to discuss the appointment of a particular person as the Chairman of the Commission was allowed.

Progs: 7th April, 1938, Vol. LII, No. 6, p. 250.

*Criminal Procedure Code, section* 144, *order under, whether can be discussed.*

A particular case in which an order under section 144, Criminal Procedure Code, is alleged to have been wrongly passed cannot be discussed in an adjournment motion; but the promulgation of such an order as a part of carrying on the administration and the general effect of the order and the interfering character of the administration by the exercise of the power can be discussed.

Progs: 8th April, 1937, Vol. L, p. 41.

*Individual case, when can be subject matter of.*

An order passed on a particular individual, apart from a question of policy, however

aggrieved the individual might be and however strong the case might be in his favour, can never be brought in in an adjournment motion.

Progs: 5th August, 1937, Vol. LI, No. 1, p. 198.

*Individual strike, whether can be subject matter of adjournment motion.*

Individual strikes cannot be the subject matter of an adjournment motion unless there is a specific issue in it.

Progs: 15th June, 1939, Vol. LIV, No. 10, p. 58.

*"Situation", whether definite matter.*

An adjournment motion for the purpose of discussing "a situation" is not one regarding a definite matter. A situation arising of some facts is vague.

Progs: 11th February, 1941, Vol. LIX, No. 1, pp. 206 and 242.

## 4. TIME LIMIT.

*Time taken by adjournment for prayer whether can be deducted.*

The time during which the House remains adjourned for prayer cannot be deducted from

the time of two hours limited for an adjournment motion.

Progs: 2nd August, 1937, Vol. LI, No. 1, p. 109.

[*Note.*—This ruling was given before the Assembly Procedure Rules were framed by the Assembly under section 84(1) of the Government of India Act, 1935, in 1939.]

*Time for speech whether can be extended.*

The Speaker has no power under the rules to extend the time limited for the speech of a member.

Progs: 28th November, 1939, Vol. LV, No. 1, p. 65.

## AMENDMENT.

*Motion for circulation and motion for reference to Select Committee—Priority.*

Where there are two amendments proposed, one for circulating a Bill for eliciting public opinion and the other for referring the Bill to a Select Committee, the former should be taken up first.

Progs: 10th September, 1937, Vol. LI, No. 4, p. 1270.

*Moving of amendment by member other than one giving notice.*

An amendment standing in the name of one member cannot be moved by another member.

A short notice motion by a member similar to that can however be moved.

Progs: 24th August, 1937, Vol. LI, No. 3, p. 678.

*Moving of amendment by member other than one giving notice.*

Unless a member who has given notice of an amendment has left instructions that he would not be present when the amendment may be taken up, any other member cannot be allowed to move such amendment.

Progs: 12th September, 1940, Vol. LVII, No. 7, p. 110.

*Notice not received in time.*

If a notice of amendment to a resolution is not received by the Secretary 7 days before the date fixed for discussion, such an amendment will not be allowed to be moved if any member objects unless the Speaker in his discretion otherwise determines.

Progs: 8th February, 1938, Vol. LII, No. 1, p. 30.

*Short notice amendment.*

It is entirely within the competence of the Speaker whether to admit an amendment at short notice or not and if it is of such consequence as vitally affects an issue, the Speaker will consider admitting it.

Progs: 9th August, 1937, Vol. LI, No. 2, p. 16.

*Short notice amendments of Government.*

When objection is taken, the Speaker would be reluctant to admit a short notice amendment by a private member. A short notice amendment proposed by the Government stands on a different footing as the Government have to put in short notice amendments out of deference to the numerous non-official amendments which are tabled with a view to facilitate the work of the House and should receive different treatment, but the Speaker is not bound to accept such amendments.

Progs: 14th September, 1937, Vol. LI, No. 4, p. 1469.

*Short notice amendment in regard to motions not moved.*

When there is a notice of a motion in the agenda paper but the mover does not move it, short notice amendments in connection with such a motion will be allowed.

Progs: 2nd May, 1939, Vol. LIV, No. 7, p. 134.

*Short notice amendment—notice by Government—explanation necessary.*

When a short notice of an amendment is given by Government some explanation for the delay must be given to the Speaker. Mere sending in the amendments does not automatically admit them.

Progs: 17th July, 1940, Vol. LVII


*Short notice amendment.*

The general practice is that [illegible] notice amendment from the Government side is admitted then notices of all amendments received by the time when the Government notice is received are to be treated as short notice amendments so that the other side may not have any grievance on that score. Unless something transpires on the floor of the House in the course of a debate and Government wants time to consider it, short notice amendments will not be allowed. In case in the course of a debate the Government finds it necessary that something else should be done the House will be adjourned to consider the matter.

Progs: 15th August, 1940, Vol. LVII, No. 4, p. 73.

# BILL.

## 1. AMENDMENT.

*Amendment, scope of—.*

In considering whether an amendment is in order or not, the tests are: it must be (*i*) relevant to, and (*ii*) within the scope of the question to which it is proposed. Both these tests must be satisfied.

A Bill which is limited in aim, scope and object cannot by means of amendment create any more extensions of rights, beyond the principles and provision of the Bill. Neither is it open to insert new principles beyond those which a Bill seems to affirm or enact.

An amendment which cannot be proposed to a clause of a Bill and not relevant to it having regard to its subject matter and context is irrelevant to the clause itself, though it may be possible to have the provision of such an amendment as a new clause if it is within the scope of the Bill.

The scope of a Bill has to be determined with reference to its preamble and its aims and objects and with due regard to citations and provisions in the Bill itself. It is by consideration of these three together but

not taking any one in isolation that an amendment relating to the scope of a Bill has to be scrutinised.

If a Bill has an "open" preamble, i.e., if it seeks to amend an Act without any reservation, amendments to all the sections of the Act would generally be within the scope of the Bill.

On the other hand if a Bill has a "closed" preamble, viz., when the Bill seeks to amend only certain sections of an Act (e.g., whereas it is expedint to amend..... Act in the manner hereinafter appearing), amendments to other sections of the Act, due regard being paid to the preamble, the statement of objects and reasons and the citations of the Bill will be out of order.

The contents of an amendment ought to have some bearing upon the subject introduced by the principal motion; further every amendment must be drawn up so as to leave the question, if altered in accordance therewith, in an intelligible form. The requirement of relevancy extends to an insistence upon each amendment being related to the particular clause in connection with which it is moved. All amendments must also be relevant to the scope of the question.

This is however subject to this, that anything which is of consequential nature or anything which is necessary to make a clause a workmanlike job, comes within the scope of the question and is relevant to it but such relevancy must mean that it bears some relationship to the question which is specifically put before the House. The test would be whether a secure peg can be found in the Bill as originally introduced on which to hang the amendment—whether the case for the amendment, viz., the argumentative justification for it depends substantially on the provisions of the Bill as introduced and does cohere with the rest of the Bill. On the other hand, these tests should not be so rigid and narrow as to deny the House the opportunity of giving a workmanlike design to the scheme of the Bill as introduced.

Progs: 20th September, 1937, Vol. LI, No. 4, p. 1639.

[*Note.*—*See* Appendix *p.* 154 for full Ruling.]

*Amendment, scope of—Factors to take into consideration.*

The scope of a Bill has to be determined with reference to its preamble, its aims and objects and with due regard to the citations. It is the consideration of these three together,

not one in isolation that an amendment relating to the scope of a Bill has to be scrutinized.

Progs: 5th May, 1939, Vol. LIV, No. 7, p. 241.

*Amendment whether within the scope of Bill—Matters to be considered.*

In considering whether an amendment is within the scope of a Bill it is not merely the objects and reasons but the Bill itself which should be taken into consideration.

Progs: 31st March, 1939, Vol. LIV, No. 5, p. 202.

*Amendment—Correcting the number of year.*

A short notice amendment on the floor of the House was allowed to be moved for the purpose of substituting the figure "1938" in the place of "1937" in a Bill which contained the latter figure.

Progs: 4th March, 1938, Vol. LII, No. 3, p. 235.

*Amendment—Doubt as to being in order.*

Where an amendment seems to be out of order but there are equally good reasons to the contrary, the decision should be in favour of the right of the House to consider the amendment on the merits.

Progs: 22nd September, 1937, Vol. LI, No. 4, p. 1785.

Progs: 27th September, 1937, Vol. LI, No. 4, p. 2045.

*Amendment by Government changing structure of the Bill.*

If the Government comes forward with an amendment which may change the whole face of a Bill all the amendments of which notice has been given become out of order and therefore it is not fair to allow such amendment of Government without giving an opportunity to other parties to move amendments to such amendment.

Progs: 19th August, 1940, Vol. LVII, No. 4, p. 194.

*Amendment, having effect of negative vote.*

An amendment which has the effect of a negative vote is out of order.

Progs: 20th September, 1937, Vol. LI, No. 4, p. 1054.

[*Note.*—The amendments regarding which the above ruling was given were for the deletion of a clause in the Bengal Tenancy Amendment Bill, 1937. Mr. Speaker however allowed the amendments to be moved as such amendments had been allowed in the past. In the case of the Ministers' Emolument Bill, 1937, when objection was taken to the proposal of the Government for withdrawing certain clauses of the Bill, the Member-in-charge was allowed to move a short notice amendment for the deletion of those clauses. (*Vide* Progs: 12th September, 1937, Vol. LI, No. 2, p. 176. *Vide* also the Bengal Expiring

Laws Bill, 1938, in the case of which an amendment that a Schedule to the Bill be omitted was moved. Progs: 3rd March, 1938, Vol. LII, No. 3, p. 181.)]

*Amendment—Identical amendment already moved.*

When an amendment has already been moved a further amendment of an identical nature on the same issue cannot be moved.

Progs: 13th February, 1941, Vol. LIX, No. 1, p. 321.

*Amendment—Motion for reference to Select Committee.*

Motion for reference to the Select Committee is an amendment to the main motion and therefore in that connection the principles underlying the Bill can also be discussed.

Progs: 22nd April, 1941, Vol. LIX, No. 6, p. 258.

*Preamble, amendment of.*

A preamble should not be changed unless the alteration comes within the scope of the Bill concerned.

Progs: 4th February, 1941, Vol. LIX, No. 1, p. 119.

*Bill deleting clause—Amendment proposing substantive clause.*

Where a clause of a Bill seeks to delete a clause of an Act an amendment to the clause proposing a substantive clause in place of it is in order.

Progs: 20th September, 1937, Vol. LI, No. 4, p. 1645.

*Bill passed by Upper House with modification—Motion by member to substitute original clause as passed by Lower House, whether in the nature of amendment.*

When a Bill is sent to the Lower House by the Upper House with certain modifications, a motion to restore the original clause of the Bill as passed by the Lower House is in the nature of an amendment.

Progs: 4th December, 1940, Vol. LVIII, p. 352.

## 2. NON-OFFICIAL BILLS.

*Circulation of copies before introduction and consideration.*

A non-official Bill is not, according to convention, opposed at the introduction stage; copies of a non-official Bill need not be circulated if the member intends only to introduce the Bill. But such a Bill cannot be

taken into consideration, or referred to a Select Committee or circulated for the purpose of eliciting public opinion unless copies of the Bill have been circulated to members at least seven days before the Bill is taken up. The Speaker will be very reluctant to relax this rule.

Progs: 15th September, 1937, Vol. LI, No. 4, p. 1503.

## 3. PROCEDURE.

*Amendment accepted by mover.*

Where an amendment has been moved it is entirely a matter by the House whether the amendment should be accepted or not. The member who moves original motion may state that he accepts the amendment merely to help the members to come to a decision whether they should vote for or against the motion but so far as the motion itself is concerned it is before the House, and it is for the House to say whether it would accept the amendment or not.

Progs: 29th March, 1939, Vol. LIV, No. 5, p. 107.

*Amendment and discussion.*

For the sake of convenience members should move their amendments first and then a general discussion will take place.

**Progs: 3rd August, 1938, Vol. LIII, No. 1, p. 137.**

*Amendment whether should be received in the House.*

If a discussion arises on the floor of the House it is open to the Speaker to accept an amendment on the spot.

**Progs: 3rd February, 1941, Vol. LIX, No. 1, p. 32.**

*Bill containing several matters how to be put.*

*See* under DEBATE.

*Bill partially gone into—Such Bill whether can be dropped.*

Where a Bill has been partially gone into but the Government does not proceed further with the Bill, the Speaker has no right to compel the Government to do so.

**Progs: 13th July, 1939, Vol. LIV, No. 12, p. 261.**

*Introduction of Bill.*

It is the convention of the House never to oppose introduction of a Bill.

**Progs: 5th April, 1939, Vol. LIV, No. 5, p. 385.**

*Motion for eliciting public opinion within a particular time.*

When several motions are moved for eliciting public opinion on a Bill and several dates are proposed a convention has been established that the motions are divided into two parts; the first part relates to eliciting public opinion and the second is concerned with the date. If the first part is carried then the question of date arises.

**Progs: 3rd December, 1940, Vol. LVIII, pp. 296-97.**

*Motion for third reading—By whom to be made.*

It is for the Minister-in-charge of a Bill to formally move for the third reading of the Bill.

**Progs. 22nd June, 1939, Vol. LIV, No. 11, p. 160.**

*Moving of a Bill by member other than one giving notice.*

A Bill of which notice has been given by one member cannot be moved by another member. But in special circumstances (e.g., when the original mover was detained in Jail) a short notice to move the Bill from any member of the group to which the original mover belongs will be accepted.

**Progs: 13th September, 1940, Vol. LVII, No. 7, p. 144.**

*Notice of amendment whether can be given by Chairman of Select Committee.*

Although the Chairman of a Select Committee cannot be ruled out from giving notice of amendment, but when he accepts the report of the Select Committee, it is preferable that other members of his party should give such notice.

Progs: 30th March, 1938, Vol. LII, No. 6, p. 94.

*Priority—Discretion of Government to decide regarding Government Bills.*

Though Bills which are more mature than others should be taken up first, but in regard to Government Bills, the Government can decide which Bills are to be taken in priority to others. The Speaker is not entitled to interfere with the Government's discretion.

Progs: 18th April, 1939, Vol. LIV, No. 6, p. 61.

*Postponed clauses, when should be taken up.*

It is entirely within the discretion of the Speaker to put postponed clauses of a Bill at any particular time.

Progs: 14th September, 1937, Vol. LI, No. 4, p. 1455.

*Putting in amendments at the last stage.*

It is against all parliamentary practice and procedure to put in amendments at the last moment.

Progs: 28th February, 1940, Vol. LVI, No. 2, p. 179.

*Re-circulation after circulation.*

It is permissible for a Bill to be recirculated after it has come back from circulation. Once the Member-in-charge moves for reference of the Bill to a Select Committee, the members have the power to move for referring the matter again to public opinion, i.e., for re-circulation.

Progs: 2nd March, 1938, Vol. LII, No. 3, p. 96.

*Technical bar against proceeding with.*

Where there is a technical bar under any rule against proceeding with a Bill there should be convention, as far as possible, that such a technical bar should not be allowed to stand in the way at least so far as non-official Bills are concerned.

Progs: 29th March, 1939, Vol. LIV, No. 5, p. 105.

*Withdrawal of part of Bill.*

It is permissible to withdraw any particular section from a Bill and not to move it at all.

Progs: 12th August, 1937, Vol. LI, No. 2, p. 174.

4. UPPER HOUSE.

*Bill as introduced in Upper House—not within its competence but it is so as passed—Bill sent to Lower House.*

It is constitutionally improper that a House which has not the power to introduce a particular type of Bill should definitely do so and then change the character at a later stage of the legislative procedure. Where a Bill containing certain financial clauses was introduced in the Upper House but the Bill as passed did not contain such clauses and the Bill as passed was sent to the Lower House, the Bill in the particular circumstances was allowed to be proceeded with in the Lower House without the course being considered as a precedent. It was however ruled that such procedure in the Upper House would be constitutionally improper and should not be allowed.

Progs: 28th March, 1939, Vol. LIV, No. 5, p. 42.

*See* also under LEGISLATION.

### 5. ULTRA VIRES.

*Ultra vires, question of—Power of Speaker to decide.*

*See* under LEGISLATURE.

## BUDGET.

### 1. CUT MOTION.

*Cut motion—Discussion on general demand whether can be allowed.*

A particular cut motion is to be confined to the discussion of the grievances raised in that particular motion but every cut motion is an amendment to the main motion. Therefore a member can speak on the main motion and therein can discuss his grievances also.

Progs: 12th March, 1940, Vol. LVI, No. 3, p. 324. *See* also p. 338.

*Discussion—General policy of retrenchment whether can be discussed in economy cut motion.*

A general discussion on retrenchment can be allowed only in the general discussion on the budget but not in connection with a cut motion for economy.

Progs. 15th February, 1938, Vol. LII, No. 1, p. 221.

*Cut motion—Discussion, whether should be restricted to specific motion.*

In the discussion regarding cut motions in the budget it is the right of the Opposition to say as to how they want to decide to carry on the debate. If the Opposition desires that the debate should be confined to the restricted issue of a cut motion, the debate should be so restricted and no general discussion can be allowed. But after the debate on a cut motion is finished and before another cut motion is taken up, it will be open to any member to rise and discuss the main demand, if he wishes.

Progs: 9th March, 1940, Vol. LVI, No. 3, p. 255.

*Guillotine—Cut motions remaining unmoved at the time whether necessary to be put before the House.*

It is not necessary that the cut motions, notices of which have been given but have not been actually moved at the time the guillotine falls should be put before the House. The main motions and the cut motions that have been moved before that time only should be put to the House.

Progs: 9th March, 1940, Vol. LVI, No. 3, p. 190.

*Cut motion—How should be taken.*

Cut motions should be taken up in such a manner as to give an opportunity to all the parties concerned to make their respective motions by rotation. When a cut motion on behalf of one party has been moved, before the second item of that particular party is taken up, other parties should have a chance to move their first cut motions.

Progs: 10th March, 1941, Vol. LIX, No. 3, p. 20.

*Cut motion, scope of.*

Where there is an established law, e.g., an Act passed by the legislature which is already existing a cut motion cannot be brought to censure Government for not doing something which is not allowed by the law.

Progs: 14th March, 1941, Vol. LIX, No. 3, p. 178.

*Cut motion, scope of.*

The failure to amend an Act cannot be the subject matter of a cut motion. The grievances against a piece of legislation which has already been passed by the House cannot also be the subject matter of a budget cut motion.

Progs: 21st March, 1941, Vol. LIX, No. 4, p. 144.

*Cut motions whether can be moved by members of the Government party.*

In law and theory every member of the House to whatever party he may belong, is

entitled to take the fullest advantage of the entire machinery and structure of legislative procedure. In practice he depends on party strength, party discipline, party organization and party cohesion as to how far a member of a party will be permitted to go counter to the decisions of the party to act as a free agent. The position that the Government party has no place in the moving of cut motions is the correct one in all well-developed party systems of Government as such cut motions being carried mean the defeat of the Government proposal. Cut motions however have been allowed to be moved by Government party on the belief that they will not be pressed to a division in order to enable the members of the Government party to suggest economies, to draw attention or to get a statement of the Government policy and programme and it is ruled that the Government members would be free to move cut motions unless they themselves wish to follow the strict party convention.

Progs: 18th March, 1938, Vol. LII, No. 5, pp. 69, 97 and 266.

[*Note.*—On this ruling being given, the European Group which was a party supporting the Ministry decided not to move any cut motion.]

*Cut motions whether can be moved by members of Government party.*

It is not in constitutional propriety that a member of the party supporting the Government should move a cut motion unless of course he is determined to throw the Government out.

Progs: 8th March, 1939, Vol. LIV, No. 3, p. 41.

## 2. DEBATE.

*Amendment under discussion—General Demand whether can be discussed.*

*See* under main heading, DEBATE.

*Discussion,—charged expenditure.*

*See* under main heading, DEBATE.

*Discussion before cut motion moved.*

As soon as a motion for demand is moved that motion is itself open for discussion. Any member can initiate a discussion without moving a cut motion.

Progs: 15th March, 1938, Vol. LII, No. 4, p. 301.

*Discussion of matter for which Government not responsible.*

Local matters for which Government is not responsible cannot be brought in any discussion regarding the budget.

Progs: 28th March, 1941, Vol. LIX, No. 5, p. 75.

*Discussion—substantive and cut motion.*

When a cut motion is moved it is not only the cut motion but also the substantive motion which are open to discussion by the members. A member rising to speak may speak not only on the cut motion itself but on the different aspects of the substantive motion. Whether a reply from the Government is required or whether Government would reply is a matter for them and not for the Speaker to decide.

Progs: 15th March, 1938, Vol. LII, No. 4, p. 311.

*Finance Minister whether should be present.*

It is a parliamentary convention that during the budget discussion the Finance Minister should be present in the House; if he is too ill to be present throughout somebody should remain in charge to the knowledge of the Speaker for taking down notes on his behalf.

Progs: 25th February, 1941, Vol. LIX, No. 2, p. 38.

*General discussion.*

In the general discussion of the budget, discussion is limited to the policy of the budget. No particular or specific cut can be discussed. These can be discussed only on cut motions.

Progs: 5th August, 1937, Vol. LI, No. 1, p. 205.

*Ministers, presence of—during discussion, if necessary.*

If the Finance Minister is present, it is not necessary for all the Ministers to be present during the general discussion of a budget although the discussion may embrace the different parts of the budget, relating to the departments of other Ministers.

Progs: 3rd August, 1937, Vol. LI, No. 1, p. 151.

*Opposition right of, to control debate.*

So far as the budget demands are concerned, the Opposition should have the right to choose the manner in which the debate should be initiated and conducted. But the Opposition must give the Speaker fair notice.

Progs: 16th August, 1938, Vol. LIII, No. 3, p. 111.

*Questions put to Minister during speech.*

Ordinarily no questions will be allowed to be put to a Minister during his speech on a demand for grant. But when there has

been no general discussion on the particular demand and when the Minister has not supplied any explanatory memorandum in regard to the items of the grant beyond a brief note, questions were allowed to be put.

Progs: 15th August, 1938, Vol. LIII, No. 3, p. 34.

*Personal conduct of Minister, whether can be discussed.*

In a debate on a cut motion on the budget, the personal conduct of a Minister is not in issue. The criticism should be confined to the general policy of the Government department and any remark as to the conduct of a Minister is out of order unless such conduct has something to do with the Government policy. When personal issues are involved, the remedy is by way of a no-confidence motion.

Progs: 20th August, 1937, Vol. LI, No. 3, p. 356.

*Salary of Deputy Speaker.*

*See* under main heading, DEBATE.

*Time limit, extension of—.*

The Speaker has no authority to extend the total period allotted for the purpose of a budget discussion by the Governor; he can however prolong the sitting on a particular day.

Progs: 5th August, 1937, Vol. LI, No. 1, p. 205.

## 3. SUPPLEMENTARY BUDGET.

*Anticipated expenditure.*

A supplementary budget is in the nature of an anticipation; the words "becomes necessary" in section 81 of the Government of India Act means "may be anticipated to become necessary" whether the expenditure may be actually incurred or not.

A supplementary demand for grant for meeting expenses which may have to be incurred if certain Bills are passed [although not passed at the time] is not out of order.

Progs: 20th September, 1937, Vol. LI, No. 4, p. 1637.

*General discussion.*

It is permissible to have a general discussion on a supplementary budget but such discussion can be only on a matter arisng directly and specifically out of the demand voted and nothing more.

Progs: 24th September, 1937, Vol. LI, No. 4, p. 1926.

A matter which had already been discussed at the time of the general budget cannot be discussed in a debate on a supplementary budget.

Progs: 24th September, 1937, Vol. LI, No. 4, p. 1937.

*General discussion.*

A supplementary estimate is of a restrictive character and such general discussion as is allowed by all conventions can only be permissible if it is in the nature of a policy which arises out of the supplementary budget; no extraneous matter can be touched.

Progs: 15th February, 1938, Vol. LII, No. 1, p. 183.

4. SUPPLY OF COPIES.

*Budget speech and budget, copies of, whether should be supplied before speech delivered.*

Copies of the budget speech of the Finance Member and of the estimates are not supplied to members till the budget speech is over.

Progs: 29th July, 1937, Vol. LI, No. 1, p. 47.

## CIRCULATION WITHIN CHAMBER.

*Circulation of pamphlets within the chamber.*

No one should circulate any newspaper or pamphlet within the chamber without the permission of the Speaker.

Progs: 1st March, 1938, Vol. LII, No. 3, p. 46.

*Circulation of statement within chamber.*

If any member wants to circulate any statement in the House the statement must be authenticated and then circulated.

Progs: 9th September, 1940, Vol. LVII, No. 6, p. 357.

## CLOSURE.

A closure can be moved at any time even during a speech.

Progs: 30th August, 1940, Vol. LVII, No. 6, p. 68.

But *see* under DEBATE—*Leader of the House, etc., entitled to uninterrupted hearing.*

*Closure motion in the midst of speech.*

A closure motion cannot be put in the midst of a speech.

Progs: 2nd May, 1939, Vol. LIV, No. 7, p. 155.

*Right of reply—closure motion carried.*

There is no right of reply if a closure motion is carried.

Progs: 9th February, 1938, Vol. LII, No. 1, p. 113.

*Right of reply when closure is put.*

When a motion for closure is put and carried the mover of a substantive motion has a right of reply. But the mover of an amendment has no right. (This was decided tentatively but the Speaker allowed the mover to give a reply under his inherent right to allow anybody to speak.)

Progs: 8th September, 1941, Vol. LX, No. 5, pp. 65, 67, 68 and 181.

## DEBATE.

*Amendment under discussion—General demand whether can be discussed.*

When an amendment is moved, not only the amendment can be discussed, but the general demand [in this case, budget discussion] can be touched upon in that connection.

Progs: 23rd August, 1937, Vol. LI, No. 3, p. 457.

*Attributing motives to member.*

It is unparliamentary to attribute motives to a member of the House. A statement that a member is reading from the Registrar's notes is unparliamentary.

Progs: 29th July, 1940, Vol. LVII, p. 364.

*Attribution of motive to member.*

It is not permissible for any member to attribute motives to another member.

Progs: 10th August, 1937, Vol. LI, No. 2, p. 102.

*Bill containing several matters how to be put.*

A Bill called the Bengal Expiring Laws Bill, 1938, contained the schedule of a number of Acts which were to be continued. It was ruled that each item of the schedule should be put separately to avoid a difficult situation. Because a schedule may contain so many items of different nature that the vote of one might be confused with the vote for the other. In order that the vote might be clear and specific, items of the schedule should be put separately.

Progs: 3rd March, 1938, Vol. LII, No. 3, p. 141.

*Calling out of name by Speaker.*

It is entirely within the discretion of the Speaker to call out the names of the speakers and the Speaker has the discretion to select them from the different groups in the House.

Progs: 3rd August, 1937, Vol. LI, No. 1, p. 124.

*Criticism of a grant with reference to other bodies.*

When a member criticises a grant in the House on the ground that the administration of a particular group of members with reference to a particular extraneous body is open to the same criticism as he is making, he cannot be ruled out. [The criticism in question was directed to the administration of the Calcutta Corporation by the Congress Party.]

Progs: 5th August, 1937, Vol. LI, No. 1, p. 226.

*Charged expenditure, whether can be discussed.*

It is permissible to have a general discussion regarding charged expenditure.

Progs: 15th February, 1938, Vol. LII, No. 1, p. 183.

*Charged expenditure—Court of Justice—Criticism of.*

The House can discuss an item of expenditure which is charged although such expenditure may not be submitted to the vote of the House.

There cannot be any reflection on the conduct of any Court of Justice but subject to

that it will be open to the House to discuss a demand even though it is not subject to the vote of the House.

Progs: 25th August, 1937, Vol. LI, No. 3, p. 580.

*Cross questions whether permitted.*

Ordinarily cross questions are not allowed but in particular circumstances where there is no time for speeches to be made and a section of the House desires that certain questions should be discussed in connection with the demand, cross questions may be put.

Progs: 16th August, 1938, Vol. LIII, No. 3, p. 114.

*Crossing between Speaker and member addressing.*

Crossing between the Speaker and a member who is addressing the House is not allowed.

Progs: 10th August, 1937, Vol. LI, No. 2, p. 93.

*Decision of party, whether can be referred to.*

The decision of party should not be referred to in the House.

Progs: 2nd August, 1937, Vol. LI, No. 1, p. 96.
Progs: 10th August, 1937, Vol. LI, No. 2, p. 107.
Progs: 11th August, 1937, Vol. LI, No. 2, p. 144.
Progs: 2nd September, 1937, Vol. LI, No. 3, p. 881.

*Decision of party.*

It is not parliamentary to divulge in the House what Minister does in the party.

Progs: 4th September, 1941, Vol. LX, No. 4, p. 131.

*Interruptions during speech.*

It is quite permissible and quite parliamentary that at times and on occasions interruptions during speeches are allowed and they greatly help the proceedings too. But interruptions are not permitted unless the speaker gives way and yields and when the speaker does not give way, it becomes the duty of the Speaker to intervene.

Progs: 15th August, 1938, Vol. LIII, No. 3, p. 62.

*Language to be used.*

If a member says that he is unacquainted with the English language, he is entitled to speak in the vernacular; but if he demonstrates his ability to speak in English in the House, he must speak in English.

Progs: 9th August, 1937, Vol. LI, No. 2, p. 18.

[*Note.*—The rule on which this ruling was given has been subsequently changed.]

*Leader of House and Leader of Opposition entitled to uninterrupted hearing—Closure in the midst of speech.*

The Leader of the House and the Leader of the Opposition should be given uninterrupted hearing; a motion that the question be now put was not allowed in the midst of a speech by the Leader of the Opposition.

Progs: 2nd August, 1937, Vol. LI, No. 1, p. 106.

*See* Progs: 21st August, 1937, Vol. LI, No. 3, p. 402.

*Member whether can speak twice on the same motion.*

A member cannot speak twice on the same motion.

Progs: 27th February, 1940, Vol. LVI, No. 2, p. 230.

*Misrepresentation of fact.*

When a member takes the responsibility of making a statement of facts, the Speaker has no authority to say whether it is a misrepresentation or not. But such statements should be made with a full sense of responsibility.

If there is any misrepresentation, another member may contradict it when his turn comes but not by interrupting the member in the midst of his speech.

Progs: 4th August, 1937, Vol. LI, No. 1, p. 163.

*Motion and amendment moved—Procedure for debate.*

After a motion for a Bill or an amendment is moved, the whole debate is open. It is open to a member either to oppose the whole Bill outright or to support the motion.

Progs: 3rd December, 1940, Vol. LVIII, p. 295.

*Opportunity for speaking.*

If a debate is of sufficient importance which necessitates a reply from members of the Opposition, the Speaker will under his inherent right of conducting the proceedings and seeing that a good judgment is arrived at, give a chance of speaking not only to the members of the Opposition but to members of any other party in the House.

Progs: 9th March, 1938, Vol. LII, No. 4, p. 62.

*Point of personal explanation.*

A point of personal explanation can be raised only with the permission of the Speaker. When a debate has been closed a member cannot make any observation without the Speaker's permission.

Progs: 29th March, 1940, Vol. LVI, No. 5, p. 206

*Presence of Ministers whether necessary.*

When a debate on a Government Bill is going on some Minister should be present in the House.

Progs: 22nd June, 1939, Vol. LIV, No. 11, p. 41.

*Presence of Minister when subject within his purview discused, whether necessary.*

When a matter within the jurisdiction of a particular Minister is under discussion such Minister should be present in the House. In this case when the Minister in question was not present, the House was adjourned for enabling the Minister to be present.

Progs: 15th December, 1939, Vol. LV, No. 3, p. 192.

*Question when can be put.*

A question can be put only with the permission of the Speaker. The words "He shall ask the question through the Speaker" mean that.

Progs: 29th March, 1940, Vol. LVI, No. 5, p. 209.

*Question whether can be put to Minister.*

When a Minister is called upon to reply to a debate, a question can be put to him by a member with the permission of the Speaker.

Progs: 15th March, 1941, Vol. LIX, No. 3, p. 244.

*Reading from newspapers.*

Extracts from newspapers true to the purpose can be read but the name of the newspaper [e.g., by saying that the speaker was reading from such and such newspaper] cannot be mentioned.

Progs: 16th August, 1937, Vol. LI, No. 2, p. 263.

*Reading from newspapers.*

It is a parliamentay convention not to read extracts from newspapers; but if a member with a view to illustrate his argument, reads some extracts, he is allowed to do so.

Progs: 9th August, 1937, Vol. LI, No. 2, p. 33.
Progs: 11th August, 1937, Vol. LI, No. 2, p. 144.

*Reference to confidential document.*

Before referring to any confidential document in the course of a debate, the documents must be placed before the Speaker.

Progs: 27th March, 1940, Vol. LVI, No. 5, p. 96.

*Reference to editorial of newspapers.*

Editorial comments of a newspaper cannot be referred to.

Progs: 2nd September, 1937, Vol. LI, No. 3, p. 916.

*Reference to officer by name.*

In making any allegation against any particular individual, his name should not be mentioned, but he should be referred to as a certain officer.

Progs: 24th August, 1937, Vol. LI, No. 3, p. 569.

*Reference to person present in gallery.*

No reference can be made to a person present in the gallery.

Progs: 26th March, 1940, Vol. LVI, No. 5, pp. 53 and 111.

*Reference to Upper House.*

It is not permissible in referring to the proceedings in the Upper House to refer to the Upper House by name. The proceedings may be referred to as occurring in another place.

Progs: 14th February, 1938, Vol. LII, No. 1, p. 164.

*Salary of Deputy President.*

The salary of the Deputy President having been fixed by the Legislature and the Government not being responsible for the same, such salary cannot be a matter of discussion in the House on the budget demand.

Progs: 20th August, 1937, Vol. LI, No. 3, p. 338.

*Speaker, whether should call upon members to take part in a debate.*

When nobody stands up it is no business of the Speaker to call upon anybody to take part in a debate.

Progs: 19th August, 1938, Vol. LIII, No. 3, p. 239.

*Time limit of speech on resolution.*

By virtue of the power vested in the Speaker under Rule 99(*3*), i.e., Standing Order No. 59, the Speaker may, in the case of a resolution for the discussion of which he has allotted the maximum time under sub-rule (*1*), prescribe a time limit for speeches shorter than that referred to in Rule 43, i.e., Standing Order No. 28.

Progs: 9th August, 1937, Vol. LI, No. 2, p. 27.

[*Note.*—S. O. No. 59 corresponds to Rule 82 and S. O. No. 28 to Rule 41 of the Assembly Procedure Rules, 1939.]

*Written Speech, whether can be delivered—Financial statement.*

A financial statement is something different from an ordinary speech and the Finance Minister is entitled, under an established convention, to read out from a written speech. Written speeches should however be deprecated as far as possible.

Progs: 29th July, 1937, Vol. LI, p. 34.

But the reading of written speeches cannot be absolutely banned.

*Ibid.*

Progs: 3rd August, 1937, Vol. LI, No. 1, p. 155.

*See* also Progs: 2nd September, 1937, Vol. LI, No. 3, p. 892.

*Written speeches, whether can be taken as part of proceedings.*

Written speeches unless they are delivered in the House cannot be taken as part of the proceedings.

Progs: 21st March, 1938, Vol. LII, No. 5, p. 192.

*Call for division by a member other than Leader or Whip of party.*

An individual member should not call for a division of his own accord; only responsible members of a party such as the Leader or the Whip should call for it. Some such convention should be established.

Progs: 23rd August, 1938, Vol. LIII, No. 4, p. 55.

*Member dragged into lobby by force.*

The vote of a member who has on a division been dragged into a lobby by force will be expunged.

Progs: 24th September, 1937, Vol. LI, No. 4, p. 1960.

*Member not taking part in voting, whether can call for division.*

A member who has not taken part in voting by saying either "Aye" or "No" cannot question the decision of the Speaker and call for a division.

Progs: 10th September, 1937, Vol. LI, No. 4, p. 1276.

## FINANCIAL BILL.

*Amendment to Bill.*

An amendment to a financial Bill requires the recommendation of the Governor.

Progs: 17th August, 1937, Vol. LI, No. 2, p. 239.

*"Bill amending law"—Meaning of.*

A Bill would be a Bill amending the law with respect to any financial obligation within the meaning of section 82 of the Government of India Act not only when it amends any law but also when it makes a law to amend the general law even though there is no specific law to amend.

Progs: 28th March, 1939, Vol. LIV, No. 5, p. 43.

*Procedure relating to—Government of India Act, 1935, section 82(1). Recommendation of Governor—Section 82(3)—Recommendation to Chamber—Right of Speaker to decide nature of Bill—Objection by Minister—Bill falling within section 82(3) introduced—Government to take early steps to decide their attitude.*

(A) The following Bills or any amendment making the following provisions cannot be introduced or moved except on the recommendation of the Governor, i.e., except on the responsibility of the Executive Government and no private member can therefore bring in any such Bill or give notice of any amendment to any Bill without the recommendation of the Governor, viz., which—

(1) imposes or increases any tax,

(2) regulates the borrowing of money or gives any guarantee, by the Province,

(3) provides for or affects any appropriation of public revenue,

(4) declares any expenditure to be expenditure charged on the revenues of the Province or increases such amount.

(B) Any Bill with any such aforesaid provision cannot be initiated in a Legislative Council.

(C) There is no bar to any amendment being made to a Bill, otherwise duly brought

up before the Legislative Council, without changing its character, although the amendments must have the recommendation of the Governor before it can be introduced or moved.

(D) By the explanatory clause in section 82(*2*) any Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fine or other pecuniary penalties or for the payment of fees for licences or fees for services rendered; but if such fines, penalties or fees are credited to the revenues of Government, any proposal to appropriate such fines, penalties or fees will be governed by the previous provisions, viz., it cannot be introduced or moved except on the recommendation of the Governor and such a Bill (but not amendment) cannot be initiated in a Legislative Council.

(E) A Bill which does not provide for appropriation of revenues by its own operation but involves expenditure from the revenues as its direct consequence can be introduced in any Chamber, Council or Assembly, but unless the Governor recommends to any Chamber the consideration of the Bill, it cannot be passed; this governs only a Bill but not an amendment to a Bill otherwise duly brought up. But such amendment must not change the character of the Bill.

Where a Bill recommended by the Governor involves financial obligation of a certain amount, an amendment seeking to reduce the amount to a lesser figure would be deemed, as a matter of constitutional convention, to have the recommendation of the Governor.

Where a Bill falls within section 82(*1*) of the Government of India Act, it would be sufficient if a Minister of Government merely mentions in giving notice that it is made on the recommendation of the Governor; but in a case falling within section 82(*3*), the recommendation to the Chamber must be in the nature of a formal communication to the Chamber, i.e., to the Speaker or to the President as the case may be.

It would be for the Speaker to decide as to whether a Bill or an amendment comes within the provision of section 82(*1*) or 82(*3*).

If any Bill or amendment which is alleged to fall within section 82 is admitted without any recommendation of the Governor as required by sub-section (*1*) or sub-section (*3*), the Minister-in-charge of the department should raise an objection at the earliest possible and appropriate opportunity before the House; it would facilitate matter if in the meantime necessary steps are taken in this behalf.

When a Bill has been introduced which falls within section 82(*3*), a convention should be followed that the Executive Government should come to a decision immediately after such a Bill is introduced as to their attitude, so that in case the recommendation of the Governor is refused, the House may have an early notice and may not unnecessarily waste its time in considering a Bill which cannot in the last stage be passed in the absence of the Governor's recommendation.

**Progs**: 23rd August, 1937, Vol. LI, No. 3, p. 427.

[*Note.—See* Appendix, p. 137, for the full Ruling.]

*Recommendation of Governor.*

Section 82(*1*) of the Government of India Act refers to something in the nature of appropriation of public revenue or what is called in England Money Bill which by its direct implication brings in financial expenditure.

Section 82(*3*) does not refer to a Bill which means direct expenditure but refers to a Bill as a necessary consequence of which any expenditure may be incurred.

So far as Bills within section 82(*1*) are concerned it is not necessary that any recommendation for the consideration of such Bill should be made to the House itself.

"Governor" in this section means the Governor acting on the advice of his Ministers, i.e., the Executive Government.

And if such Bills are moved or introduced by the Executive Government no further recommendation of the Governor to the House is necessary. [Ministers' Emolument Bill.]

**Progs**: 12th August, 1937, Vol. LI, No. 2, p. 176.

*Recommendation of the Governor—Duty of Speaker.*

When a Bill falls within section 82(*3*) of the Government of India Act, it is for the House to consider whether recommendation by the Governor to the House has been made or not. But when a Bill falls within section 82(*1*) it is for the Speaker to decide whether the Bill complies with the requirements of the section.

**Progs**: 12th August, 1937, Vol. LI, No. 2, p. 176.

## GOVERNMENT OF INDIA ACT.

*Section 241(b)—Governor, whether means Government.*

"The Governor" mentioned in section 241(*b*) of the Government of India Act does not mean the Governor in his discretion but means the Governor as advised by his Ministers.

**Progs**: 24th August, 1938, Vol. LIII, No. 4, p. 122.

## GOVERNOR, ADDRESS TO.

*Address regarding matters concerning executive administration of Province.*

The scheme and the spirit of the constitution is such that it is not proper to introduce a procedure of presenting an address to the Governor in matters in which the Governor functions as the constitutional Governor unless it be of a purely formal nature such as an expression of congratulation or condolence or a momentous matter of national concern. No address would lie against any action of the Executive Government in regard to matters which ordinarily lie within the scope of ministerial responsibility, as the law provides for action to be taken by the legislature in such matters.

Progs: 28th March, 1938, Vol. LII, No. 5, p. 506.

[*Note.*—*See* Appendix, p. 189, for full Ruling.]

## GUILLOTINE.

*Motions to be moved by Member.*

When the guillotine falls the motions for demands are moved by the Ministers in charge and then put by the Speaker.

Progs: 28th March, 1938, Vol. LII, No. 5, p. 504.

## INFORMATION TO PRESS.

*Information about adjournment motion given to Press before admission.*

No information about the intention of a member to move an adjournment motion can be given to the Press for publication before such motion is admitted. Even after admission it is desirable that the matter should be kept within the House as far as possible.

Progs: 16th February, 1940, Vol. LVI, No. 1, p. 114.

## INFORMATION, POINT OF.

*Information, point of, when can be raised.*

A point of information can be raised only at the end of a speech unless it is connected with the speech itself.

Progs: 8th April, 1937, Vol. H, p. 49.

## LEGISLATION.

*Bill amended in Upper House—Amendments not considered by Lower House—Effect.*

Certain amendments were made by the Upper House in a Bill passed by the Lower House. Thereafter a motion that the amendments made by the Upper House in the Bill

be taken into consideration was put and lost. It was ruled that the position in this case was that instead of taking every single item of the amendment item by item the House did not take into consideration the Bill at all. The sum total of that was that the House did not agree in substance with any of the amendments that had been put to the House. The only alternative therefore for the Speaker was to send a message under Rule 80 that the Assembly discarded the amendments which had been proposed and it was for the Government thereafter to take up the matter further as is necessary under the law.

Progs: 1st March, 1938, Vol. LII, No. 3, p. 57.

## LEGISLATURE—COMPETENCE OF.

*Legislation on matters within special responsibility of Governor.*

The Legislature is fully competent to legislate in all matters unless the Governor or the Governor-General thinks that it is a matter in which his interference is necessary; and if his interference is necessary he has got the full power under the Government of India Act to proceed in such a manner as he

considers necessary. So far as the Legislature is concerned the question of safeguarding the legitimate interests of the minority is a matter over which the Speaker has no power but is one within the power of the Governor-General or the Governor. If any decision of Speaker has the effect of stultifying the proceedings of the House it will be inconsistent with his position as Speaker. It is not for the Speaker to stultify the proceedings of the House; it is for the Governor or the Governor-General by acting under the power he can exercise to take such steps as he thinks advisable.

Progs: 6th March, 1939, Vol. LIV, No. 2, p. 159.

*Competence of—Speaker, power of—to decide.*

Where a piece of proposed legislation is challenged as not being within the competence of the Legislature that is to say, in a matter which may ultimately go to the Federal Court, the Speaker by his decision should not stand in the way. If the Speaker is convinced that a matter is wholly beyond the competence of the Legislature he should ordinarily come to a decision to that effect.

Progs: 7th March, 1939, Vol. LIV, No. 2, pp. 223 and 224.

*Speaker, power to decide whether Bill* ultra vires.

Where there is a *prima facie* case of a violation of the law, the Speaker has the right to give a ruling whether the House is competent to deal with it or not, e.g., the Speaker has a discretion to decide whether previous sanction of the Governor is necessary to the introduction of a Bill. If no such sanction has been given, it is not the duty of the Speaker to send a Bill to the Governor for sanction.

Progs: 26th June, 1939, Vol. LIV, No. 11, pp. 116-117.

*Speaker—Bill alleged to be* ultra vires—*Power of Speaker to decide.*

The convention is that the Speaker should not disallow a Bill which is alleged to be *ultra vires* and may go to the Federal Court unless the Speaker is absolutely satisfied that the Bill is *ultra vires.*

Progs: 3rd December, 1940, Vol. LVIII, p. 289.

*Speaker, power to decide question whether Bill* ultra vires.

The question whether a piece of proposed legislation is *ultra vires* or *intra vires* of the legislature is a matter that can only be

ultimately decided by authoritative judicial decision and the Speaker's function is merely to examine the question in so far as it is necessary to decide the admissibility of the motions and amendments arising out of the provisions of the Bill.

Progs: 4th April, 1939, Vol. LIV, No. 5, p. 326.

[*Note.*—*See* Appendix, p. 195, for full Ruling.]

*Speaker, whether entitled to decide the competence of Legislature to pass a Bill.*

It is the inherent duty of every Speaker to see that an amendment or motion which is placed before the House is in conformity with law. When a question is raised as regards the competency of the Legislature to take up a matter, the Speaker will have to decide it with a view to enable him to consider whether he will put the motion or not.

Progs: 29th March, 1938, Vol. LII, No. 6, p. 43.

[*Note.*—*See* Appendix, p. 177, for full Ruling.]

## MOTION.

*Motion for discussion of report.*

A motion for a discussion of a report, e.g., a Land Revenue Commission Report, may

be made and is quite parliamentary although no decision is desired to be arrived at.

Progs: 28th July, 1941, Vol. LX, No. 1, p. 27.

[*Note.*—The motion was in the following form:—

"I beg to move that the Report of the Bengal Land Revenue Commission be discussed" and was put to the House in this form. (p. 40)].

*Motion which would be taken as of no-confidence.*

The Government will go out if it is defeated upon substantial issues, issues of principle, issues which really matter. It will go out if the responsible leaders of either party or any party move a direct vote of no-confidence and carry that vote. If the House, on matters non-essential, matter of mere opinion, matters that do not strike at the root of the proposals that the Government make, and do not destroy fundamentally the general intentions of the Government in introducing legislation, wish to vary the propositions of the Government, then a division on such amendments and questions will not be regarded as a vote of no-confidence.

Progs: 18th March, 1938, Vol. LII, No. 5, p. 64.

[*Note.*—*See* Appendix, p. 162, for full Ruling.]

*Notice given by several members.*

If there are several movers of the same motion usually it is for them to come to an arrangement as to who should be considered as the mover.

Progs: 8th August, 1940, Vol. LVII, No. 3, p. 255.

*Withdrawal—Division whether permissible—Discussion—Majority vote.*

Whether leave should be granted for withdrawal of a motion should be decided by a vote of the House. Unanimous decision is not necessary.

No discussion can be allowed on a motion for withdrawal.

A division was allowed on a motion for withdrawal of a motion after the result was announced on a counting of heads.

Progs: 21st August, 1937, Vol. LI, No. 3, p. 405.

*Withdrawal—Unanimous vote, whether necessary.*

A unanimous vote of the House for withdrawal of a motion is not necessary.

Progs: 21st August, 1937, Vol. LI, No. 3, p. 409.

*Withdrawal—by member other than mover.*

A motion cannot be withdrawn by any one other than the mover but a member of the party to which the mover belongs can move for withdrawal of a motion in the absence of the mover because otherwise a party cannot function as a party.

Progs: 28th November, 1939, Vol. LV, No. 1, p. 53.

## SPECIAL MOTION.

*Message of congratulation to Commander-in-Chief, whether in order.*

A special motion that a message of rejoicing be sent to the Commander-in-Chief of the Army at the capture of certain places is in order.

Progs: 2nd April, 1941, Vol. LIX, No. 5, p. 201.

*Request to Central Government to take steps.*

A special motion requesting the Central Government to take certain steps in regard to refugees coming from Burma into India was held to be not only permissible but a legitimate step to take though strictly the authority of taking decision was not within the competency of the House.

Progs: 24th August, 1938, Vol. LIII, No. 4, p. 78.

## ORDER OF BUSINESS.

*Business on agenda, whether should get preference over business coming afterwards.*

When the agenda of business of the House has been framed anything which comes afterwards, e.g., a communication of the passage of a Bill by the Upper House must take place after the business on the agenda is finished.

Progs: 3rd April, 1940, Vol. LVI, No. 5, p. 335.

## ORDER, POINT OF.

*Order, point of, when can be raised.*

A point of order can be raised during a speech when it arises from the speech itself.

Progs: 8th April, 1937, Vol. L, p. 49.

*Point, whether can be raised when division bell ringing.*

A point of order cannot be raised when a division bell is ringing.

Progs: 4th March, 1941, Vol. LIX, No. 2, p. 306.

## ORDINANCE.

*Disapproval of an Ordinance not as a whole or on ground of omission to provide for certain matters or for improper use whether permissible.*

When an Ordinance is laid before the House it is the constitutional right of any member to table a resolution disapproving of the Ordinance. But the motion must be for disapproval of the Ordinance as a whole. Disapproval on the ground of omission to provide for certain matters in the Ordinance or for the improper use of it cannot be allowed. In this case a resolution disapproving of the Jute Ordinance was tabled on the ground (1) that the minimum price fixed by the Ordinance was low; (2) and that there was no provision for the payment of a minimum price to the grower and that the Government made improper use of the Ordinance. The resolution so far as the first ground was concerned was allowed but so far as the second ground was concerned it was disallowed.

Progs: 8th December, 1939, Vol. LV, No. 2, p. 112.

*Discussion on Ordinance not placed before the House.*

Where an Ordinance involves a very important matter, it is the constitutional

right of the House to have a discussion on the same. If the Government does not promptly lay the Ordinance before the House to allow such discussion, the Speaker would allow such discussion to take place after preliminary formalities for such a discussion are gone through. It is not necessary that an Ordinance should be laid before the House by the Executive Government. If the Executive Government does not lay an Ordinance before the House and causes any delay thereby depriving the House of an opportunity to exercise a constitutional right it is quite open to the Speaker to allow an opportunity to any member to lay the Ordinance before the House so that the House can get an opportunity to discuss the matter.

Progs: 7th July, 1939, Vol. LIV, No. 12, p. 85.

*Discussion on Ordinance withdrawn.*

When an Ordinance has been withdrawn there can be no discussion. on the Ordinance as such.

Progs: 7th July, 1939, Vol. LIV, No. 12, p. 87.

*Motion for disapproval after expiry of Ordinance.*

There can be no motion of disapproval of an Ordinance after the period thereof has expired.

Progs: 5th April, 1939, Vol. LIV, No. 5, p. 383..

## PRACTICE.

*Enquiry into whether proper procedure followed in the Upper House.*

Whether the proper procedure for a Bill has been followed in the Upper House or not (in this case whether sanction of the Governor was obtained before an amendment to a Finance Bill was passed by the Upper House) is for that House to decide. The Lower House cannot question the passing of any Bill on that ground. It would be presumed generally that what was done was done in accordance with requirements of law.

Progs: 1st March, 1938, Vol. LII, No. 3, p. 47.

*Message of welcome to distinguished person.*

A message of welcome was sent on behalf of the House to Generalissimo Marshal Chiang-Kai-Shek and Madamme Chiang-Kai-Shek.

Progs: 18th February, 1942, Vol. LXII, p. 88.

*Procedure of moving motion.*

A motion is moved formally and then the speech is made.

Progs: 21st August, 1940, Vol. LVII, No. 5, p. 35.

*Statement by Leader of the House or of Opposition—Notice to be given.*

Whenever the Leader of the House or the Leader of the Opposition desires to make any important statement he should inform the Speaker and simultaneously inform either the Whip or the Leader of the corresponding Opposite Party. If the Government wants to make a statement either the Chief Minister or any other Hon'ble Minister will take steps that the Government Whip informs the Leader of the Opposition so that he may have an opportunity to come. Similarly if the Leader of the Opposition wishes to make a statement, the Opposition Whip should inform the Leader of the House so that he will have an opportunity to come.

Progs: 21st July, 1940, Vol. LVII, No. 2, p. 184.

*Statement by Minister.*

The Speaker can allow a Minister to make a statement on an important matter.

Progs: 7th July, 1939, Vol. LIV, No. 12, p. 88.

*Statement by Minister regarding general policy of Government.*

A Minister may make a statement of general policy in regard to any specific matter when it is necessary to do so with reference to a question put by another member.

Progs: 5th April, 1939, Vol. LIV, No. 5, p. 371.

*Statement by Minister on resignation.*

A statement by a Minister who had resigned and a reply by the Chief Minister were allowed to be made in the House.

Progs: 30th February, 1939, Vol. LIV, No. 1, p. 159.

*Statement by Minister on resignation.*

A statement by a Minister on his resignation was allowed to be made (The Hon'ble Mr. N. R. Sarker).

Progs: 20th December, 1939, Vol. LV, No. 3, p. 387.

*Time-table for discussion.*

Leaders of different groups in the House should give a complete list of speakers who would like to speak and the Speaker would arrange the time-table accordingly after exercising a certain amount of discretion and judgment.

Progs: 16th February, 1939, Vol. LIV, No. 1, p. 118.

## PRIVILEGE.

*Arrest of member—Notice to be given.*

Whenever a member of the House is detained or arrested which may enforce his

absence from the House, the fact should be immediately communicated to the Speaker.

Progs: 14th February, 1938, Vol. LII, No. 1, p. 148.

*Detention of member without trial—Convention for enabling them to attend meeting of the Assembly.*

The following recommendation was made by the Privilege Committee the report of which was placed before the Assembly on the 19th September, 1940:—

(1) That immediate steps be taken by Government to pass the Bengal Legislative Assembly Powers and Privileges Bill (1939) already introduced in the Assembly on the 12th July, 1939, by the Hon'ble Deputy Speaker into law.

(2) That pending such legislation the following conventions be adopted, namely:—

(*i*) if any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, information of such arrest, detention, conviction or imprisonment together with the charges against such member shall forthwith be sent to Mr. Speaker by person or persons under whose

authority or order the arrest, detention, conviction or imprisonment is effected;

(*ii*) if Mr. Speaker on information received as above or otherwise is of opinion and if he thinks necessary after consulting the wishes of the Assembly that the presence of a member who has been arrested, detained, convicted or imprisoned is essential for the purpose of the proceedings of the Assembly or any Committee thereof Mr. Speaker shall inform the Provincial Government accordingly and the Provincial Government shall take necessary steps forthwith to bring such member on such escort as they may consider necessary or in such other manner as they may deem necessary before Mr. Speaker and such member may attend such meeting of the Assembly or any Committee thereof as the case may be on such day or days as may be required by Mr. Speaker, provided that the Provincial Government may take such steps as they may consider fit for the custody of the member during the time the presence of such

member is not necessary in the Assembly or the Committee thereof;

(*iii*) that a member should be entitled to exercise all his rights and privileges as such as far as this is possible while in custody; and

(*iv*) that such further privileges as may be agreed upon after discussion between Mr. Speaker and the Minister in charge of the Department of Constitution and Elections may also be extended to a member who may be under arrest, detention, conviction or imprisonment.

Progs: 19th September, 1940, Vol. LVII, No. 7, p. 294.

*Election—Right of members to elect members of Upper House, whether a privilege.*

The right of the members of the Assembly to elect their representatives in the Upper House is not a matter of privilege of the Assembly nor of the members in connection with their legislative business or their constitutional functions. Whether a rule which provided that only the European members of the Assembly would be allowed to take part in the election for filling up a vacancy caused by the resignation of a

European member of the Upper House is *ultra vires* or not is not within the authority of the Speaker to decide.

Progs: 2nd August, 1937, Vol. LI, No. 1, p. 83.

*Molestation of member outside House for acts done inside House.*

The matter as to whether a member is molested outside the House for his conduct inside the House is *prima facie* a question of privilege of the House.

Progs: 29th March, 1938, Vol. LII, No. 6, p. 39.

*Motion for referring matter to Privilege Committee—Debate if allowed.*

If a motion for referring a matter to the Privilege Committee is moved and the mover makes a speech, no further debate is usually permitted except to ask the Government to state its views.

Progs: 1st April, 1938, Vol. LII, No. 6, p. 142.

*Motion relating to privilege—Priority.*

A motion relating to privileges of members will have priority over other business.

Progs: 14th February, 1938, Vol. LII, No. 1, p. 138.

*Publication of questions, etc., in newspapers before they are admitted by Speaker.*

Publication of questions, resolutions, Bills, etc., in newspapers prematurely before they are moved in the House is improper on the part of the newspaper concerned and would be considered an offence against the privilege and convention of the House.

The Speaker has power to take necessary action against recalcitrant newspapers [nature of action not specified].

Progs: 30th August, 1937, Vol. LI, No. 3, p. 449.

*Publication of questions, Bills, etc., by members in newspapers.*

Although neither the House nor the Speaker has any power to deal with members who give copies of questions, resolutions, Bills or other matters before they are admitted by the Speaker to the Press for publication, it should be observed as a matter of convention that no member should give such copies of questions, etc., of which notice may have been given by him to the Press for publication before they are admitted by the Chair and are officially intimated to members. It would be considered a breach of privilege if any member does so.

Progs: 30th August, 1937, Vol. LI, No. 3, p. 749.

*Short notice question whether sent to Government department within time.*

A question whether a short notice question by a member has been sent to the Government department within reasonable time by the Assembly department is not a question of privilege but only a matter of administrative convenience of the Assembly department.

Progs: 20th March, 1939, Vol. LIV, No. 4, p. 31.

## PROGRAMME OF BUSINESS.

*Days allotted to non-official business—Subsequent order of Governor allotting those days to Government business.*

The Governor has authority to alter the programme of business by directing that Government business should be taken up on the days which were first allotted to non-official business.

Progs: 28th February, 1939, Vol. LIV, No. 2, p. 107.

[*Note.*—This ruling was given before the Assembly. Procedure Rules were framed by the Assembly under section 84(*1*) of the Government of India Act, 1935, in 1939.]

## QUESTIONS.

*Question to be addressed to Speaker.*

A question should be addressed to the Speaker and it would be for the Speaker to see whether the question is properly answered or not. A member should not carry on a conversation with a Minister.

Progs: 15th March, 1940, Vol. LVI, No. 4, p. 152.

## QUESTIONS.

### 1. GENERAL.

*Allocation of first hour entirely to questions.*

It is not a mandatory provision that the Speaker must allow the entire first hour of every sitting for questions. The rule means that the first hour will be available for questions if the Speaker thinks that it is reasonable to carry on with questions up to that period provided there are sufficient supplementary questions. In case there are no supplementary questions and the questions are over before the expiry of the first hour, the rule does not mean that the Speaker should postpone the sitting without taking up the next business.

Progs: 4th September, 1937, Vol. LI, No. 3, pp. 1017-1018.

*Answer given by predecessor Government—Government for the time being not agreeing with answer.*

A question to which a printed answer was supplied by the Ministry for the time being but with which the succeeding Government was stated to be not in agreement was held back for a suitable answer to be given.

Progs: 16th February, 1942, Vol. LXII, No. 1, p. 7.

*Answer not given by Government.*

If after a question has been admitted the Government does not give an answer the Speaker cannot take any steps.

Progs: 8th March, 1940, Vol. LVI, pp. 3 and 106.

*Answer by Minister other than one to whom question put.*

Although it would not be fair to the House for a Minister not to be present at the time of answering questions put to him another Minister may be allowed to answer a question provided he is prepared to answer supplementary questions.

Progs: 16th August, 1937, Vol. LI, No. 2, p. 240.

*Answer to be given by Chief Minister when answer to be given by Government as a whole.*

When an answer to a question is to be given by the Government as a whole, it is to be given by the Chief Minister unless there is a departmental distribution in which case the Minister concerned can reply on behalf of the Government.

Progs: 18th February, 1942, Vol. LXII, No. 1, p. 68.

*Answer not satisfactory—Duty of Minister.*

If the answer of a Minister is not satisfactory to members as regards points on which information is sought, the Minister concerned should answer more fully at the earliest possible opportunity.

Progs: 1st March, 1938, Vol. LII, No. 3, p. 40.

*Member putting question, absent—Answer to short notice question.*

A short notice question cannot be answered orally in the absence of the member who has put it.

Progs: 28th August, 1937, Vol. LI, No. 3, p. 705.

In such circumstances the question and the answer would be put on the table.

If, however, the Minister says that it is of such importance that it requires to be answered orally, it can be done.

Progs: 3rd September, 1937, Vol. LI, No. 3, p. 952.

*Member putting question absent—Giving of answer whether should be postponed.*

If a member putting a question is not present in the House and the fact is brought to the notice of the Speaker, giving of answer to that question should be held back.

Progs: 26th July, 1940, Vol. LVII, No. 2, p. 280.

*Ministry, Change of—Succeeding Minister not taking responsibility for action of predecessor Minister.*

It is legitimate for a succeeding Minister to say that he is not responsible for any act or omission of his predecessor.

Progs: 16th February, 1942, Vol. LXII, No. 1, p. 13.

*Names, whether can be mentioned when criminal investigation probable.*

When a statement is brought out which might be the subject matter of criminal investigation it is not desirable from the parliamentary point of view to mention any name.

Progs: 22nd June, 1939, Vol. LIV, No. 11, p. 12.

*Question, to be put to Minister concerned.*

A supplementary question should be put to the Minister concerned and not to the Minister "whoever he may be".

Progs: 8th September, 1937, Vol. LI, No. 4, p. 1128.

*Presence of Minister.*

It is the duty of the Minister to be present in the House when a question standing in his name is taken up.

If for any unavoidable reason, a Minister cannot be present he should inform the Speaker about his absence so that the question standing in his name may not be put.

Progs: 10th September, 1937, Vol. LI, No. 4, p. 1243.

*Reason for not giving information, whether should be given.*

It is parliamentary practice to give reason in cases where the Government declines to give any information asked for by a question.

Progs: 3rd February, 1941, Vol. LIX, No. 1, p. 25.

*Refusal to answer.*

The Government can decline to give an answer to a question only on the ground that it is not in the public interest.

Progs: 18th April, 1939, Vol. LIV, No. 6, p. 51.

*Refused by Government to disclose information.*

A member is entitled to put a question but to what extent it would be in consonance with the Government's policy to release their departmental information is a matter for the Hon'ble Minister to decide.

Progs: 16th February, 1939, Vol. LIV, No. 1, p. 86.

*Same question by several members.*

It is desirable that every member should exercise a discretion and the same question should not be put by several members because it takes away unnecessarily a lot of time of every department if the same question is repeated several times.

Progs: 8th August, 1940, Vol. LVII, No. 3, p. 219.

*Speaker's discretion in disallowing questions.*

Whether a question is to be disallowed or not is a matter entirely left to the Speaker's discretion. That matter cannot be brought before the House but if any member desires to discuss the matter, the Speaker would allow discussion in his Chamber.

Progs: 21st March, 1938, Vol. LII, No. 5, p. 162.

*Time-limit for answering.*

There is no rule as to the period which a Minister should take to answer a question and a Minister cannot be compelled to answer a question within a prescribed time.

Progs: 4th August, 1937, Vol. LI, No. 1, p. 160.

## 2. SUBJECT MATTER.

*Assembly Department, Question regarding.*

The Speaker will not be prepared to give an answer to any query on any matter arising out of administration of the Assembly department on the floor of the House. The Speaker would however give such information to members in his Chamber.

Progs: 15th February, 1939, Vol. LIV, No. 1, p. 41.

*Assembly Department, Question regarding.*

No information regarding the Assembly department, e.g., admission of visitors, will be given in the House. But if a member comes to the Chamber of the Speaker he will be supplied with all information.

Progs. 30th August, 1940, Vol. LVII, No. 6, p. 34.

*Assembly Department, Question regarding.*

Questions asking for information regarding the office of the Assembly department will not be given in the House. A member seeking such information should see the Speaker in his Chamber.

Progs: 10th March, 1941, Vol. LIX, No. 2, p. 16.

*Details of candidates and their qualifications. —Question regarding.*

It is against rules of parliamentary practice to probe into the details of candidates and their qualifications.

Progs: 15th February, 1939, Vol. LIV, No. 1, p. 25.

*Incidents with which present Government not concerned—Question regarding.*

Questions regarding incidents for which the Government for the time being to which the question is put is not concerned cannot be allowed.

Progs: 22nd May, 1939, Vol. LIV, No. 8, pp. 141 and 149.

*Individual claims of candidates, Question regarding.*

Questions regarding individual claims of candidates do not come within the purview of the Legislature.

Progs: 22nd March, 1939, Vol. LIV, No. 4, p. 77.

*Instruction from Governor to Cabinet Ministers—Question regarding.*

**Instructions from the Governor to Cabinet Ministers cannot be the subject matter of a interpellation.**

**Progs: 9th August, 1938, Vol. LIII, No. 2, p. 47.**

*Internal administration of another House, Question regarding.*

**It is undesirable that questions of internal administration of the Upper House should be allowed in the Lower House. A question of a purely general nature may be admitted but the internal administration of the Upper House should not be made the subject matter of comment in the Lower House.**

**Progs: 17th March, 1938, Vol. LII, No. 4, pp. 327-328.**

*Members of the House—Question regarding.*

**Question asking for names of members of the House who had changed their usual place of residence from Calcutta to the muffasil will not be answered in the House. If any information is required, information will be given privately or the member should see the Speaker.**

**Progs: 4th March, 1941, Vol. LIX, No. 2, p. 303.**

*Member himself—Question affecting.*

A question which likely to affect a member himself should not be sent in his own name.

Progs: 30th March, 1939, Vol. LIV, No. 5, p. 141.

*Newspaper information—Question on the basis of.*

No question can be put on the basis of a newspaper information.

Progs: 30th August, 1937, Vol. LI, No. 3, p. 745.

*Newspaper report—Question based on.*

A question cannot be put purely on a newspaper report unless the member putting the question takes the responsibility as to the facts of the matter.

Progs: 9th August, 1937, Vol. LI, No. 2, p. 8.

3. SUPPLEMENTARY.

*Answer by different Ministers.*

When a Minister assumes responsibility and takes permission from the Chair to answer on behalf of another Minister, he is entitled to reply to supplementary questions.

Progs: 17th March, 1938, Vol. LII, No. 4, p. 325.

*Supplementary questions—Discretion of Speaker to disallow.*

**The Speaker has a discretion to disallow supplementary questions having regard to the nature and proportion of the supplementary questions put.**

**Progs: 28th February, 1939, Vol. LIV, No. 2, p. 73.**

*Supplementary—Speaker's discretion to disallow supplementary question.*

**It is the inherent prerogative of the Speaker to disallow any supplementary question which he considers to be an abuse of the right of putting questions, e.g., when a member goes on putting supplementary questions, one after another, without regard to other questions in the list.**

**Progs: 21st February, 1940, Vol. LVI, No. 1, p. 204.**

*Explanation or comment after supplementary answer.*

**After a supplementary question has been put and reply has been given a member is not entitled to put any explanation or make any comment thereon unless he gets permission to put another supplementary question.**

**Progs: 4th February, 1941, Vol. LIX, No. 1, p. 103.**

*Question asking for statement—Supplementaries whether can be put.*

When a statement is asked for by a question no supplementary question regarding Government policy can be put. If a question regarding policy is to be asked a fresh question has to be put separately.

Progs: 11th February, 1941, Vol. LIX, No. 1, p. 193.

*Question of general character—Individual cases whether can be considered.*

When a question asked is of a general character, individual cases cannot be discussed in supplementary questions.

Progs: 15th February, 1939, Vol. LIV, No. 1, p. 10.

*Individual, question affecting, whether can be asked—Question of general character.*

In a question of general character it is not proper to ask a supplementary question affecting an individual.

Progs: 2nd March, 1938, Vol. LII, No. 3, p. 66.

*Supplementary—Information in possession of a member.*

Any information that is in the possession of a member cannot be the basis for a

supplementary question. If there is something definitely wanting in the answer then only a supplementary question can be put regarding such motion.

Progs: 17th March, 1941, Vol. LIX, No. 3, p. 254.

*Supplementary question showing that member aware of answer—Whether may be allowed.*

A supplementary question asking whether the Hon'ble Minister was aware of certain state of things showing that the questioner already knew the facts cannot be put.

Progs: 4th March, 1938, Vol. LII, No. 3, p. 191.

*Question requiring statistical information—Supplementary question on questions of policy whether can be asked.*

When any statistical information is required by a question supplementary questions will be confined only to statistics and no supplementary question can be asked on major questions of policy that may be involved.

Progs: 6th July, 1939, Vol. LIV, No. 12, p. 14.

*Question asking for statistical information—Supplementary in respect of policy.*

When a question is asked asking for information on statistical matters, no supplementary can be asked regarding question of policy.

Progs: 13th August, 1941, Vol. LX, No. 3, p. 26.

*Supplementary question whether can be asked when statement is made by Minister.*

When in answer to a question a statement is made by a Minister no supplementary questions can be asked.

Progs: 28th June, 1939, Vol. LIV, No. 11, p. 208.

*Supplementary question—Relevant to answer given.*

Any information sought to be elicited by a supplementary question must be strictly relevant to the answer which has been given.

Progs: 27th September, 1937, Vol. LI, No. 4, p. 2006.

*Time-limit.*

It is for the Speaker, even within the time-limit of one hour allotted for questions, to see that the questions are answered in a manner he thinks fit and proper. It is open

to the Speaker after allowing a certain number of supplementary questions to a question to take up the next one with a view to finish the questions within the time-limit. Legitimate questions arising out of a question would certainly be allowed up to the time-limit; after the time-limit the Speaker cannot allow any more time for questions even though there may be supplementary questions.

**Progs:** 14th September, 1937, Vol. LI, No. 4, p. 1428.

## REFLECTION ON CHAIR.

*"Accommodating to the Government."*

To say that the Speaker may be "accommodating to the Government" is a reflection on the Chair.

**Progs:** 28th February, 1939, Vol. LIV, No. 2, p. 71.

*"Giving indulgence" to one speaker.*

When a member said addressing the Speaker "Sir, do not give indulgence to the Chief Minister", it was ruled that it was a reflection on the Chair and the member on being asked withdrew his remark.

**Progs:** 1st September, 1937, Vol. LI, No. 3, p. 871.

***Reflection.***

**Saying that the Speaker allowed a member to continue his speech which was not strictly relevant is not a reflection on the Chair.**

**Progs: 15th March, 1938, Vol. LII, No. 4, p. 293.**

***Reflection.***

Where a member said that he wanted to see what decision the Speaker was going to make and whether he was going to administer the same admonition to the Government side as he did on the Opposition, it was ruled that the statement was a reflection on the Chair.

Progs: 27th June, 1939, Vol. LIV, No. 11, p. 170.

## REFLECTION ON HOUSE.

*Cries of "Shame".*

Cries of "shame" "shame" when a decision goes against a particular group is a reflection on the House itself and should not be indulged in.

**Progs: 9th August, 1937, Vol. LI, No. 2, p. 66**

*"Indecent haste".*

When a member said that a measure was referred to a Select Committee in an indecent haste, it was ruled that it was a reflection on the House.

Progs: 5th August, 1938, Vol. LIII, No. 1, p. 253.

## RESOLUTION.

*Resolution asking for proportionate representation in the services—Whether in order.*

A resolution recommending that there should be representation of different communities in the services in certain proportions is within the competence of the House.

Progs: 25th August, 1938, Vol. LIII, No. 4, p. 273.

*Resolution in conflict with existing law.*

A resolution is not of a mandatory character but is merely in the nature of a recommendation and if there is anything in a resolution which comes into conflict with existing provisions of the Government of India Act or any statutory rules and orders framed on the subject, it is for the Executive Government to consider whether, in view of this, they would ask for the repeal of those

statutory provisions or not, whether they would accept those rules and regulations or not and whether they should give effect to the resolution or not. Such a resolution is not out of order.

Progs: 24th August, 1938, Vol. LIII, No. 4, p. 93.

*Resolution in terms other than expression of opinion whether permissible.*

Resolution drafted not as an expression of opinion but as a decision of the House is not allowable. In the present case a resolution on the war drafted in terms of a decision was allowed in special circumstances having regard to the fact that resolutions in similar terms were passed by other legislatures.

Progs: 18th December, 1939, Vol. LV, No. 3, p. 260.

*Resolution moved by Government.*

A resolution was moved on behalf of Government to the effect that it was desirable that legislation on certain subjects should be within the competence of the Provincial Legislature and not of the Central Legislature.

Progs: 5th August, 1938, Vol. LIII, No. 1, p. 234.

*Resolution not moved.*

A resolution which is not moved is not the property of the House.

Progs: 9th September, 1937, Vol. LI, No. 4, p. 1195.

## SELECT COMMITTEE.

*Consent of members.*

No motion for a reference to a Select Committee can be moved unless the written consent of the proposed members be given.

Progs: 13th August, 1937, Vol. LI, No. 2, p. 234.

*Consent of members.*

The consent of members proposed as members of a Select Committee must reach the Assembly Office before 3 o' clock on the day on which the particular motion is to be moved. If received after 3 p.m. on that day it will not be admissible.

Progs: 29th July, 1938, Vol. LIII, No. 1, p. 69.

*Consent of members.*

So far as the personnel of a Select Committee is concerned, whether it is in addition to the number of members proposed by way

of amendment or as amendment by way of substantive motion, consent of the proposed members is necessary.

Progs: 3rd August, 1938, Vol. LIII, No. 1, p. 138.

*Consent of members.*

The consent of members proposed to serve on a Select Committee must be received in the office a clear day before the meeting in which a reference to Select Committee is to be made; otherwise the names of such members will not be accepted.

Progs: 26th July, 1940, Vol. LVII, No. 2, p. 285.

*Member giving consent to serve, whether can withdraw name.*

A member who has given his consent to serve on a Select Committee and his name has been proposed in the motion for reference to the Select Committee cannot withdraw his name. In such circumstances the mover of the motion can withdraw the name with the leave of the House. But without the leave of the House it cannot be done. An amendment may also be moved that the name of the person desiring to withdraw be deleted.

Progs: 31st March, 1939, Vol. LIV, No. 5, p. 225.

*Consent of member once given whether can be withdrawn.*

Whether a member wishes to serve in a Select Committee or not he has to choose it for himself before the motion comes to the Speaker. Once consent has been given, it cannot be withdrawn without permission of the House. If a member after giving consent desires that he would not serve on a Select Committee, the Speaker has no jurisdiction over the matter; it is a matter for the House. A member can offer his resignation.

Progs: 6th September, 1940, Vol. LVII, No. 6, p. 276.

*Deliberation extended with special permission of the Speaker.*

When a Select Committee cannot finish its deliberations within the time fixed by the House, the time may be extended with the special permission of the Speaker.

Progs: 4th April, 1939, Vol. LIV, No. 5, p. 318.

*Invitation to public to give evidence after reference.*

When a Bill is referred to a Select Committee, the Committee is not entitled to

issue a general invitation to the public to give evidence on any matter outside the scope of the Bill.

If it is the desire of the House that the Select Committee will not only consider the Bill but also consider such things as will come to them it will be perfectly open to the Committee to consider those matters. The Select Committee, in addition to that, is always entitled, if it so desires, to have expert evidence and call, in accordance with the practice, for any memoranda from any person or bodies.

Progs: 3rd August, 1938, Vol. LIII, No. 1, p. 154.

*Names of proposed members whether can be omitted.*

When a member has originally given notice of proposing several names for a Select Committee, he cannot afterwards omit any name from the motion without the leave of the Speaker.

Progs: 10th September, 1940, Vol. LVII, No. 6, p. 428.

*Scope of recommendation.*

When a Bill is referred to a Select Committee, the Select Committee is fully responsible as to the manner in which they will

discuss the provisions and if necessary they are fully entitled to ask for expert opinion and advice, and if necessary, opinion from such persons and such witnesses as they think necessary. But they cannot go beyond the scope of the Bill itself which will be against the decision of the House which has accepted the principles of the Bill.

Progs: 3rd August, 1938, Vol. LIII, No. 1, p. 164.

## SPEAKER.

*Authority of, to interpret section 150 of the Government of India Act.*

Interpretation of section 150 of the Government of India Act regarding what is meant by the words "for the purposes of India" is a matter for the Federal Court to decide and the Speaker has no authority to intervene. But in such cases the Speaker will not shut out discussion.

Progs: 31st March, 1941, Vol. LIX, No. 5, p. 135.

*Discretion to choose speaker.*

*See* under "DEBATE".

*Discretion—Speaker in doubt.*

When the Speaker is in doubt, he would allow a matter to be discussed in the House and leave the matter to its decision.

Progs: 5th August, 1938, Vol. LIII, No. 1, p. 245.

*Duty of, to serve summons on members.*

Summonses to members cannot be served through the Speaker. They should be served at the residence of members.

Progs: 22nd May, 1939, Vol. LIV, No. 8, p. 150.

*Emolument—discussion in the House.*

Anything concerning the emolument of the Speaker should not ordinarily be discussed on the floor of the House.

Progs: 12th August, 1937, Vol. LI, No. 2, p. 181.

*Power of, to adjourn Assembly.*

The Speaker has absolute power to adjourn the Assembly at any time he chooses.

Progs: 9th March, 1940, Vol. LVI, No. 3, p. 190.

*Power of, to censure and suspend member for casting reflection on the Chair.*

A certain member when he was not allowed extension of time for making his speech said

that he sat down under protest and remarked that the Speaker had gagged the members in the House. It was held that it was a grave reflection on the Chair and a censure was passed on the member by the Speaker. It was held, however, that the Speaker had no right to suspend a member for his conduct for the remainder of the session.

Progs: 18th December and 19th December, 1939, Vol. LV, No. 3, pp. 322 and 326.

*Power of, to close debate.*

The Speaker has inherent power to close a debate in order that the debate might not be continued for days together with a view to providing for other matters.

Progs: 2nd August, 1940, Vol. LVII, No. 3, p. 83.

*Power of, to decide competence of legislature.*

*See* under "LEGISLATURE".

*Power of, to decide legality of proceedings.*

Where certain proceedings already held are challenged as illegal it is an established convention that such a matter is ordinarily beyond the scope of the Speaker to amend. Otherwise there would be a conflict between the courts and the Speaker in case the Speaker

assumes upon himself the responsibility of deciding the matter of legality instead of leaving it to the courts to decide whether the matter is illegal.

Progs: 6th March, 1939, Vol. LIV, No. 2, p. 157.

*Power of, to expunge remarks in report of members of Select Committee.*

The Speaker has a discretion to expunge remarks in the minute of dissent of a member of Select Committee which he thinks to be offensive.

Progs: 20th February, 1939, Vol. LIV, No. 1, p. 156.

*Power of, to extend time of sitting of House.*

The Speaker has the power to extend the time of the sitting of the House.

Progs: 4th March, 1940, Vol. LVI, No. 2, p. 357.

*Power of, to extend time for deliberation of Select Committee.*

*See* under "SELECT COMMITTEE".

*Power of, to rectify illegal proceedings.*

Even though the proceedings of the House of a particular day may be illegal or

irregular, the Speaker has no power to open the question or to rectify the proceedings.

Progs: 9th March, 1940, Vol. LVI, No. 3, p. 190.

## SUMMONING OF ASSEMBLY.

*Summoning by Governor not appointed in accordance with Government of India Act, 1935, whether valid.*

Sir John Anderson was appointed Governor of Bengal under the Government of India Act, 1919. After the Government of India Act, 1935, came into operation, no fresh appointment was made by a Commission as required by the Act of 1935. A point of order was raised whether the summoning of the Assembly or the nomination of a temporary Speaker and framing of the rules governing the conduct of the Assembly by Sir John Anderson as Governor were valid or not. It was ruled that the Assembly was validly constituted inasmuch as under section 321 of the Government of India Act no fresh appointment was necessary and inasmuch as under section 53(2) the validity of anything done by the Governor cannot be called in question on the ground that it was done otherwise than in accordance with any instrument of instruction issued to him.

Progs: 8th April 1937, Vol. L, p. 29.

## UNPARLIAMENTARY CONDUCT.

*Crying of "shame".*

It is most unparliamentary that when voting is going on and the members are going to exercise their discretion in a matter there should be any cries "shame" from any side.

Progs: 26th July, 1940, Vol. LVII, No. 2, p. 292.

*See* also under "REFLECTION ON HOUSE".

*Handing over paper to a Minister.*

It is not parliamentary for any member to hand over any paper to a Minister except through the Speaker.

Progs: 5th March, 1940, Vol. LVI, No. 3, p. 45.

## UNPARLIAMENTARY LANGUAGE.

*"Acting Dishonestly."*

To say that a member has acted dishonestly is unparliamentary.

Progs: 17th March, 1939, Vol. LIV, No. 3, p. 500.

*Asking Opposition to take responsibility for delaying measure.*

Asking the Opposition whether it would take the responsibility of delaying a measure is not unparliamentary.

Progs: 5th March, 1940, Vol. LVI, No. 3, p. 18.

*"Bunkum", "Nonsense".*

The words "Bunkum" and "Nonsense" are not unparliamentary if they are not used as personal reflections but are used in respect of a Bill.

Progs: 21st August, 1940, Vol. LVII, No. 5, p. 71.

*"Dirtiness".*

The word "dirtiness" is unparliamentary when used in regard to a political party.

Progs: 10th March, 1938, Vol. LII, No. 4, p. 130.

*"Dirty and mean political motive" said with reference to a body of persons outside House.*

Where the political motive of a body of persons (without naming them) outside the House was said to be "dirty and mean" it was ruled that the Speaker had no jurisdiction to stop the use of such language.

Progs: 24th August, 1937, Vol. LI, No. 3, p. 526.

*"Dishonest", "Hypocritical".*

The words "Dishonest" and "Hypocritical" when used with reference to a party are unparliamentary.

Progs: 11th September, 1937, Vol. LI, No. 4, p. 1334.

*"Flippant".*

The word "flippant" although not strictly unparliamentary should not be used.

Progs: 12th February, 1941, Vol. LIX, No. 1, p. 271.

*"Fraudulent" statement.*

The word "fraudulent" used in regard to a statement made by a member is unparliamentary.

Progs: 16th February, 1939, Vol. LIV, No. 1, p. 89.

*"Frivolous" used in reference to a question, whether unparliamentary.*

Whether a remark is frivolous or not is entirely for the Speaker to decide and the word "frivolous" used by a member with reference to a question by another member was asked to be withdrawn.

Progs: 2nd August, 1937, Vol. LI, No. 1, p. 75.

*"Gallant".*

The word "gallant" used in reference to Minister, e.g., "the gallant Home Minister" cannot be used.

Progs: 4th August, 1941, Vol. LX, No. 2, p. 16.

*"Henchmen".*

The word "Henchmen" used with regard to particular members is unparliamentary.

Progs: 22nd February, 1940, Vol. LVI, No. 1, p. 316.

*Hinsa— " হিংসা ".*

The word " হিংসা " used in reference to a member is unparliamentary.

Progs: 15th February, 1938, Vol. LII, No. 1, p. 198.

*"Hypocrite".*

Calling a member "Hypocrite" is unparliamentary.

Progs: 30th September, 1937, Vol. LI, No. 4, p. 2309.

The word "hypocrite" used in reference to a Minister is unparliamentary.

Progs: 22nd February, 1940, Vol. LVI, No. 1, p. 312.

*"Incorrect".*

The word "incorrect" used in reference to the reply to a question is not in the nature of an insinuation and is not unparliamentary.

Progs: 10th August, 1937, Vol. LI, No. 2, p. 73.

*Insinuation of corruption and bribery if salary lowered.*

It is not unparliamentary for a member to say that the lowering of salaries of Ministers will open the gate to bribery if he wants to draw an inference that a lower salary will result in bribery and corruption.

Progs: 11th August, 1937, Vol. LI, No. 2, p. 128.

*"Intruder".*

The word "intruder" used with reference to a member is unparliamentary.

Progs: 9th March, 1940, Vol. LVI, No. 3, p. 227.

*"Kicked out".*

The words "kicked out" with reference to a member who was said to have been kicked out of his constituency is unparliamentary.

Progs: 10th August, 1937, Vol. LI, No. L, p. 104.

*"Leaderless Rabble".*

The expression "Leaderless Rabble" applied to the Opposition is unparliamentary as also the words "Leaderless Group of Politicians".

Progs: 28th November, 1940, Vol. LVIII, p. 79.

*"Liar".*

A Persian expression meaning "a liar should not be given protection" was held to be unparliamentary.

Progs: 25th March, 1939, Vol. LIV, No. 4, p. 265.

*"Lie".*

The word "lie" is unparliamentary.

Progs: 17th March, 1938, Vol. LII, No. 4, p. 361.

To say that a member is telling a "lie" is unparliamentary.

Progs: 19th August, 1938, Vol. LIII, No. 3, p. 185.

*"Ministers are servants of the Commissioner of Police".*

To say that "Ministers are servants of the Commissioner of Police" is unparliamentary.

Progs: 26th February, 1942, Vol. LXII, No. 1, p. 421.

*"Mischievous".*

The word "mischievous" in the context that a Minister has put a "mischievous" interpretation is unparliamentary.

Progs: 1st March, 1938, Vol. LII, No. 3, p. 56.

*"Nonsense".*

The word "nonsense" when used in respect of an argument is not unparliamentary. But if it is used in a manner which obstructs the proceedings of the House, e.g., in the midst of a speech, such use should not be allowed.

Progs.: 27th February, 1941, Vol. LIX, No. 2, p. 135.

Progs: 3rd March, 1941, Vol. LIX, No. 2, p. 271.

*"Not becoming a gentleman".*

The words "not becoming a gentleman" with reference to an insinuation said to be made by a member is unparliamentary.

Progs: 24th August, 1937, Vol. LI, No. 3, p. 526.

*"Ordered by anybody to do anything".*

To say that a Minister or a member has been or expects to be "ordered by anybody to do anything" is unparliamentary.

Progs: 2nd April, 1941, Vol. LIX, No. 4, p. 211.

*"Prince of bureaucrats".*

The words "Prince of bureaucrats" used with reference to the Governor is unparliamentary.

Progs: 11th August, 1937, Vol. LI, No. 2, p. 125.

*"Ramble".*

The word "ramble", e.g., a member was allowed to ramble, should not be used.

Progs: 3rd February, 1941, Vol. LIX, No. 1, p. 69.

*"Shabbily dressed".*

Where a member referred to a particular official by name who was not present in the House as being "shabbily dressed with rain coat on", it was ruled that such an aspersion should not be made.

Progs: 24th August, 1937, Vol. LI, No. 3, p. 510.

*"Shame" "Shame", cries of.*

It is unparliamentary to cry "Shame" "Shame" when a party leaves the House.

Progs: 10th March, 1938, Vol. LII, No. 4, p. 127.

*"Snap Division".*

The expression "snap division" is not unparliamentary.

Progs: 28th June, 1939, Vol. LIV, No. 11, p. 212.

*"So-called" Government.*

The word "so-called" when used with reference to the Government is unparliamentary as it questions the very existence of the House.

Progs: 10th September, 1937, Vol. LI, No. 4, p. 1267.

*"So-called labour representative".*

It is improper to call the representatives of labour constituencies "so-called labour representatives".

Progs: 6th September, 1937, Vol. LI, No. 3, p. 1101.

*"So-called" Proja Party.*

The word "so-called" when used with reference to a party (e.g., the Proja Party) cannot be ruled out as unparliamentary.

Progs: 11th September, 1937, Vol. LI, p. 1333.

*"Stupid".*

The word "stupid" used in reference to an argument is not parliamentary.

Progs: 10th August, 1937, Vol. LI, No. 2, p. 102.

*"Talking rot".*

The expression "talking rot" should not be used in debates.

Progs: 3rd February, 1941, Vol. LIX, No. 1, p. 69.

*Telling the Speaker "to assist himself".*

To tell the Speaker "to assist himself" is unparliamentary.

Progs: 19th August, 1938, Vol. LIII, No. 3, p. 186.

*"Treat with contempt."*

To say that one treats the remarks of another member with contempt is not unparliamentary.

Progs: 17th March, 1939, Vol. LIV, No. 3, p. 491.

*"Treat with contempt it deserves".*

The words "Treat with contempt it deserves" used with reference to a remark made by a member [but not with reference to a member himself] is not unparliamentary.

Progs: 24th September, 1937, Vol. LI, No. 4, p. 1933.

*"Treating words of Opposition with contempt".*

"Treating words of Opposition with contempt" is an well-approved parliamentary expression.

Progs: 15th August, 1938, Vol. LIII, No. 3, p. 49.

*"Tutored".*

It is unparliamentary to say that a Minister has been tutored to do anything.

Progs: 3rd September, 1940, Vol. LVII, No. 6, p. 103.

*"Unworthy of the House".*

The words "unworthy of the House" used with reference to a question put by a member is unparliamentary.

Progs: 14th September, 1937, Vol. LI, No. 4, p. 1426.

*Viswasghataka*—"বিশ্বাস ঘাতক"

The word "বিশ্বাস ঘাতক" used in reference to the Ministry is unparliamentary.

Progs: 27th June, 1939, Vol. LIV, No. 11, p. 167.

## UNPARLIAMENTARY PRACTICE.

*Keeping away members in order to make quorum impossible.*

It is an usual parliamentary tactic of the Government and the Opposition when it suits them to keep away members so that a quorum cannot be found.

Progs: 13th September, 1940, Vol. LVII, No. 7, p. 171.

*Referring to name.*

It is unparliamentary practice to refer to names in the course of a debate.

Progs: 9th August, 1940, Vol. LVII, No. 3, p. 292.

## UPPER HOUSE.

*Reference to, in debate.*

In a debate on a cut motion for retrenchment, criticism of the Upper Chamber as unnecessary is permissible in a general way if it can be made without disturbing the harmony that should exist between the two Chambers.

Progs: 20th August, 1937, Vol. LI, No. 3, p. 334.

*Report of Public Accounts Committee whether should be placed before the Upper House.*

A report of a Public Accounts Committee which arises out of a Committee of the Lower House and is entirely for that House to consider should not be placed before the Upper House in the absence of some statutory sanction or sanction by the rules or orders.

Progs: 13th February, 1941, Vol. LIX, No. 1, pp. 307-308.

## VISITORS.

*Visitors whether allowed to talk to members.*

It is not permissible for anybody in the gallery (in this case the gallery reserved for

Government officials) to talk to the members but a member of the House cannot be stopped from talking to the visitors in the gallery if he likes though he should not ordinarily do so to interrupt the proceedings of the House.

Progs: 15th August, 1938, Vol. LIII, No. 3, p. 67.

## VOTE OF CENSURE.

*Defeat, when amounts to vote of censure.*

If there is any important measure which the Government considers to be one of sufficient importance, a defeat of Government on that tantamounts to a vote of censure. Any defeat of Government on any vital matter, even though it is not exactly a matter of confidence, tentamounts to a question of no-confidence. Whether it is a matter of vital importance or not it is entirely for the Cabinet to decide.

Progs: 14th March, 1938, Vol. LII, No. 4, p. 225.

## VOTING.

*Canvassing in the House.*

A Whip of the party is entitled to canvas within his own group and every member

including Ministers should keep to their seats when the division bell is ringing. A Whip is perfectly entitled to see that his members go to the lobby to which their leader has decided that they should go; if a Whip of one party goes to a member of a different party it may have the appearance of canvassing and countercanvassing. To avoid that, the Whips of the different parties should keep to their seats and Ministers should also stick to theirs.

Progs: 11th March, 1938, Vol. LII, No. 4, p. 193.

*Entering a lobby.*

As soon as a member enters a particular lobby on a division, his vote would be recorded in that lobby although he may not want to vote.

Progs: 26th August, 1937, Vol. LI, No. 3, p. 646.

*Member moving one motion voting for contradictory motion.*

Constitutional propriety demands that if there is a motion which is really contradictory to another motion a member moving one motion should not vote for the other motion.

A member moving a motion for reference of a Bill to a Select Committee voting in favour of a motion for circulation thereof

for eliciting public opinion does not however act improperly if he indicates a desire to withdraw his own motion.

Progs: 15th September, 1937, Vol. LI, No. 4, p. 1539.

*Member speaking in support of a motion—Voting in Noes lobby.*

A member who has spoken in support of a motion is entitled to vote against it and go to the Noes lobby.

Progs: 7th April, 1939, Vol. LIV, No. 2, p. 149.

# PART II

## *Decisions of Mr. Deputy Speaker Jalaluddin Hashemy.*

## *18th February, 1942 to 17th November, 1945.*

# Decisions of Mr. Deputy Speaker Jalaluddin Hashemy

## ADJOURNMENT MOTION.

*Fixing of date by Speaker.*

Although under the rules it is for the Speaker to intimate the *hour* when an adjournment motion is to be taken, it is the practice of the House that different dates are selected by the Speaker.

**Progs: 26th February, 1943, Vol. LXIV, No. 2, p. 51.**

*Urgency waived—Motion whether lapses.*

An adjournment motion does not lapse if the urgency of the matter is waived by the Speaker.

**Progs: 15th February, 1943, Vol. LXIV, No. 1, p. 69.**

## AMENDMENT.

*Amendment to amendment.*

Amendments to amendments are allowed in respect of Bills only, e.g., if the Government proposes certain amendments to a Bill, members are entitled to table amendments to these amendments; but so far as motions or resolutions are concerned amendments to amendments are not permissible.

Progs: 30th September, 1942, Vol.. LXIII, No. 2, p. 174.

## BILL.

*Reply by member-in-charge when a Minister has replied.*

The member-in-charge of a Bill has no right of reply when the Minister has finished his speech. He can only speak by way of explanation.

Progs: 19th February, 1943, Vol. LXIV, No. 1, p. 248.

*Note.*—A member moved a motion that the Bill which he had introduced, be referred to a Select Committee. A Minister moved by way of amendment that the Bill be recirculated for eliciting public opinion. After the Minister had finished his speech, the member-in-charge, of the Bill wanted to reply.

## BUDGET.

*Cut motions—Privilege of Opposition to choose motions.*

It is the practice that the Opposition gets the privilege of choosing their cut motions which they would move and which they would not.

Progs: 27th February, 1943, Vol. LXIV, No. 2, p. 94.

## BUDGET, SUPPLEMENTARY.

*Discussion on general policy.*

It is not permissible to discuss the general policy in a supplementary budget because already in the previous year's budget the House has sanctioned that amount for expenditure. The member is entitled to discuss only that portion which is in the supplementary grant.

Progs: 27th February, 1943, Vol. LXIV, No. 2, p. 74.

*Interruption.*

Some interruption is permissible but continued interruptions which obstruct the regular proceedings of the House are not permissible.

Progs: 21st September, 1942, Vol. LXIII, No. 1, p. 199.

*Personal explanation.*

If a member rises on a personal explanation and if the member speaking does not give way, the member offering the personal explanation will have to wait but if the member speaking gives way then the personal explanation may be given.

Progs: 24th February, 1943, Vol. LXIV, No. 1, p. 413.

*Reading of extracts from newspapers.*

Reading of extracts from newspapers in the course of a speech is not permitted.

Progs: 21st September, 1942, Vol. LXIII, No. 1, p. 173.

## DEPUTY SPEAKER.

*Powers of.*

When the office of the Speaker is deemed vacant all the duties of the office of the Speaker devolves on the Deputy Speaker, till the House elects its Speaker. Clause 18 of the Notification No. 8354A.R., dated 1st April, 1937, is *ultra vires*.

Progs: 2nd April, 1942, Vol. LXII, No. 4, p. 269.

*Note.*—Clause 18 of the notification referred to was as follows:—

"In the case of a vacancy in the office of the Speaker, the Secretary shall, subect to any directions of the Governor, assume full responsibility for the affairs of the department, provided that any matter which would ordinarily require the approval of the Speaker and which can without detriment to the public interest be deferred until a Speaker has been chosen shall be so deferred."

Subsequently the Governor was pleased to direct under the said rule 18, that until a new Speaker was chosen in the place of Sir Azizul Haque, the former Speaker, the affairs of the Bengal Legislative Assembly Department should be administered by the Secretary, Bengal Legislative Assembly, under the contral of the Deputy Speaker, Bengal Legislative Assembly, provided that any matters which would ordinarily require the approval of the Speaker and which could without detriment to the public interest be deferred until a Speaker was chosen should be so deferred.

## NON-OFFICIAL BUSINESS.

*Resolution in respect of statement made by Chief Minister—Assembly Procedure Rules, rule 95 and rule 116.*

When a statement by the Chief Minister was allowed to be made under rule 116 of the Assembly Procedure Rules, 1939, and certain motions in connection with that statement were sought to be moved, Mr. Deputy Speaker ruled that these were special motions which he had allowed under rule 95 of the Assembly Procedure Rules; these were not resolutions by private members but must be treated as Government business and not non-official business. No question of ballot therefore arose.

**Progs: 22nd September, 1942, Vol. LXIII, No. 1, p. 225.**

## PRACTICE.

*Document described "Confidential" and "For the use of members only"—Reference to such document whether permissible.*

A certain document was stated on the face of it to be confidential and it was also

written that it was for the personal use of the members only. Reference to this document was allowed to be made in the House but it was ruled that if it was not in the public interest to read out any particular portion, that portion would not be allowed to be read.

Progs: 23rd September, 1942, Vol. LXII, No. 1, p. 251.

*Reading part of speech and laying rest of it on the table.*

A statement by the Hon'ble Mr. A. K. Fazlul Haque, Chief Minister, giving a short resume about the administration of the Province which was a lengthy one was allowed to be read in part and the rest was allowed to be laid on the table and direction given that the whole statement should go into the official record.

Progs: 15th September, 1942, Vol. LXIII, No. 1, p. 31.

## PRIVILEGE.

*Breach by Newspaper—Steps taken.*

When a certain newspaper made comments on the speech of a member which were held

objectionable, the privileges that the newspaper enjoyed for reporting proceedings, etc., were withdrawn.

**Progs: 16th March, 1942, Vol. LXII, No. 3, p. 42.**

## QUESTION.

*Answer in modified form.*

An answer to a question was allowed to be made in a modified form orally in the House differing from the printed answer. Objections having been taken that the answer should be fully withdrawn and a fresh answer should be brought forward, the question was held over.

**Progs: 15th February, 1943, Vol. LXIV, No. 1, p. 49.**

*Answer—Government, whether entitled to withdraw.*

The Government can withdraw an answer to a question after it has been placed before the House.

**Progs: 16th February, 1943, Vol. LXIV, No. 1, p. 113.**

## QUESTION, SUPPLEMENTARY.

*Discretion of Speaker to disallow.*

When in the opinion of the Speaker sufficient supplementary questions have been put, further supplementary questions can be disallowed by him.

**Progs: 18th February, 1943, Vol. LXIV, No. 1, p. 181.**

## REFLECTION ON THE HOUSE.

When a member said "A statement like that made in any other House would have revoked a severe reprimand from the members themselves but he has been allowed to escape", it was ruled that the above was a reflection on the House.

**Progs: 22nd September, 1942, Vol. LXIII, No. 1, p. 231.**

## SPEAKER.

*Power of, to compel Minister to disclose what advice was given to Governor.*

A point of order was raised as to whether the House had a right to know from the

Minister concerned what advice the Minister had given to the Governor in a matter which was directly within the special responsibility of the Governor.

Mr. Deputy Speaker said:

The whole question hinges on the point whether the Speaker has got the powers to compel a Minister to disclose to the House what advice he had tendered to the Governor. In a case where the Minister's advice is not mandatory upon the Governor, in my view it is absolutely within the discretion of the Minister to take the House into confidence or not and the remedy of members does not lie in raising a point of order, but otherwise. The message of Lord Linlithgow, dated 21st June, 1937, in defining the position of the Ministers *vis a vis* the Governor clearly lays down that the Ministers are entitled if they so desire publicly to state their responsibility for any particular decision or even the advice they tendered in a particular case to the Governor. A Minister will be within his rights if he discloses to the House what advice he has given to the Governor.

Progs: 24th February, 1943, Vol. LXIV, No. 1, p. 381.

## SPECIAL MOTION.

*Subject matter not primarily a concern of the Provincial Government.*

A special motion in connection with the fast undertaken by Mr. Gandhi and its consequences was allowed to be moved.

Progs: 12th February, 1943, Vol. LXIV, No. 1, p. 41.

## UNPARLIAMENTARY CONDUCT.

*Challenge, throwing out.*

It is unparliamentary to throw out a challenge to any member.

Progs: 23rd September, 1942, Vol. LXIII, No. 1, p. 284.

## UNPARLIAMENTARY LANGUAGE.

*"Fool".*

The word "fool", used in reference to any member is unparliamentary.

Progs: 24th February, 1943, Vol. LXIV, No. 1, p. 389.

*"Foreigner", "Exploiter".*

The words "foreigner" and "exploiter" are unparliamentary.

Progs: 22nd September, 1942, Vol. LXIII, No. 1, p. 221.

*"Gentleman who was in the chair"— "tricked".*

The expression that "the gentleman who was then in the chair tricked us" was held to be unparliamentary.

Progs: 26th February, 1943, Vol. LXIV, No. 2, p. 37.

*"Lie".*

The word "lie" is unparliamentary.

Progs: 17th September, 1942, Vol. LXIII, No. 1, p. 97.

*Member denying that any particular member was referred to.*

If a member states that he did not use a particular expression or that he did not mean any particular member of that description although he may be closely identified, the only course that is open to the Chair in that case is to accept the statement by the member.

Progs: 21st March, 1942, Vol. LXII, No. 3, p. 263.

*Member, reference to without prefix.*

It is unparliamentary to refer to a member by his name only without any prefix such as Mr.

Progs: 29th September, 1942, Vol. LXIII, No. 2, p. 125.

*"Murder".*

While referring to another member of the House the word "murder" is absolutely unparliamentary.

Progs: 27th February, 1943, Vol. LXIV, No. 2, p. 63.

*"Nonsense."*

The word "nonsense" is unparliamentary.

Progs. 19th February, 1943, Vol. LXIV, No. 1, p. 235.

*"Shame".*

The word "shame" is unparliamentary.

Progs: 21st September, 1942, Vol. LXIII, No. 1, p. 171.

Progs: 27th February, 1943, Vol. LXIV, No. 2, p. 89.

*"Shut up".*

The expression "shut up" is unparliamentary.

**Progs: 22nd September, 1942, Vol. LXIII, No. 1, p. 233.**

*"Untrue".*

The word "untrue" is unparliamentary.

**Progs: 18th February, 1943, Vol. LXIV, No. 1. p. 181.**

## APPENDIX.

### Ruling on the scope of Section 82 of the Government of India Act, 1935.

The scope of Section 82 of the Government of India Act determines not only the restriction on the rights of, what may be termed in the absence of anything better, a private member of the legislature but it has its important bearing on the relative constitutional position of the two Chambers. On its true and correct exposition depend the Bills that can or cannot be originated in the Legislative Council.

2. The Section deals with five different items in two divisions, viz.,—

A. Bill or amendment making provision—

(1) For imposing or increasing any tax.

(2) For regulating the borrowing of money or the giving of any guarantee by the Province.

(3) For amending the law with respect to any financial obligations undertaken or to be undertaken by the Province.

(4) For declaring any expenditure to be charged on the revenues of the Province or for increasing the amount of any such expenditure.

B. (5) Bills involving expenditure from the revenues of a Province.

3. The following matters require elucidation in this connection:—

(1) What is the meaning of the word "tax"?

(2) What is the meaning of the phrase "amending the law"?

(3) What is the meaning of "involving expenditure from the revenues of the Province" as distinguished from "financial obligations undertaken or to be undertaken"?

(4) What is the meaning of "revenues"?

4. It will be noticed that the Section makes several important distinctions—

(*i*) certain Bills or amendments cannot be *introduced or moved* except on the recommendation of the Governor,

(*ii*) certain Bills, but not amendments, cannot be *passed* by a Chamber of the Legislature unless the Governor recommends to the Chamber the consideration of the Bill.

5. The Section also enunciates the constitutional principle that certain Bills cannot be introduced in the Legislative Council, and here also there is no mention of the word "amendment."

6. In interpreting this Section it is desirable to bear these distinctions and provisions in mind. It may at the very outset be mentioned that the provisions of the White Paper were that "money Bills" should be initiated in the Legislative Assembly only and that a recommendation of the Governor will be required for any proposal in the Provincial Legislature for imposing of taxation, for the appropriation of public revenues or for any proposal affecting the public debt of the Province or for affecting or imposing any charge upon public revenues.

7. Commenting on the proposals of the White Paper the Joint Committee said that legislative procedure in matters of finance differs in India from that which exists in the United Kingdom and they found

that the scheme of the White Paper was in conformity with "the system with which Indians are familiar and which appears to have worked sufficiently well in practice". They approved the principle behind the proposal of the White Paper in regard to the financial procedure which, they said, were "based upon the principle which must always be the foundation of any sound system of finance that *no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues,* can be made without recommendation of the Governor, that is to say, it can only be made on the responsibility of the Executive." They also definitely approved the principle that "in those provinces where the legislature is bicameral, money Bills shall be initiated in the Legislative Assembly alone." If these principles behind the proposals of the White Paper and the intentions of the Joint Committee are borne in mind, it will probably be easy to understand the bearing of Section 82 on financial procedure and practice and its effect on the constitutional position of the Assembly and the Council.

8. Now first as to the meaning of the word "tax". Under Section 311(2) taxation

"includes the imposition of any tax or impost whether general or local or special," and "tax shall be construed accordingly." In the Seventh Schedule various terms have been used, such as, tax, duties, rates, dues, tolls, fees, etc. Now tax means a tribute imposed on subjects, direct or indirect (Wharton's Law Lexicon). In effect it means any realisation from the subjects in the nature of a financial liability imposed by law or any form of compulsory payment made to the State.

The Indian Taxation Enquiry Committee of 1924-25 adopted the following definition as their working basis:—

"Taxes are compulsory contributions made by the members of a community to the governing body of the same towards the common expenditure without any guarantee of a definite measured service in return."

The Committee did not include revenue from State lands, Fisheries, Mines and Forests within the definition of tax. They were divided in opinion as to whether land revenue is a tax or not which, according to the Committee, had characteristics of rent as also of tax. They were similarly divided

with respect to Irrigation Rates. According to the Committee, if an impost is in the nature of payment for services rendered directly or indirectly, it does not come under the definition of tax. On the definition of the Indian Taxation Committee, any impost except where it is for services rendered is a tax. Judged, however, in the light of the definition in the Government of India Act, there is no doubt that excepting fines or pecuniary penalties, fees for licenses or for services rendered, which are excepted by Section 82(2), any duty, rates, tolls, fees, whether it is local or provincial or special, is a tax within the scope of Section 82. In view of the word "special" in the definition clause, both land revenue and irrigation rates will come within the term tax, as both of these are imposts on special basis.

9. The next important point is the meaning of the word "law" and of the phrase "amending the law". In its generic sense, law means the rule of action to which men are obliged to make their conduct conform. In the definition clause of the Act, "existing Indian law" means any law, ordinance, order, bye-law, rule or regulation made by any legislature, authority or person having power to make such a law, ordinance, order,

bye-law, rule or regulation. It is interesting to note that in the definition the term is "existing Indian Law" to limit its scope to existing enactments and rules, etc.

It appears that various terms have been used in the different Sections of the Act, viz.,—

(1) "An Act of the Legislature" in Section 76(2).

(2) "Amending the law" in Section 82 (*i*)(*b*).

(3) "To make laws" in Section 99(1).

(4) "A provincial law" in Section 102 (2).

(5) "Repeals, amends or affects any Act" in Section 108(2)(*ii*).

(6) "To make any law" in Section 110 (*b*).

(7) "To make any law amending any provision" of any Act in Section 110(*b*)(*ii*).

A Provincial Legislature which consists of the Governor as the representative of His Majesty and one or two Chambers, as the case may be, has power to "make a law", "to make any law", "to make laws", but the Provincial Chamber or Chambers function

only in passing or enacting a Bill, which becomes an Act of the Legislature on receiving requisite Assent. It is then "a law" and is one unit of "the law", and "the law" means the body of laws. "Repealing, amending or affecting any Act or any provision of an Act" is as much amending "the law" as the passing of a new Act, creating new rights and obligations or new rules of conduct. A new enactment may not be amending *a* or *any* law, i.e., an existing enactment, etc., but it changes or amends *the* law. That is to say, by creating new rights, or obligations, it brings about a change in the existing rights, obligations. The phrase "amending the law" therefore means not merely to bring about any change in any existing law, ordinance, order, bye-law, rule or regulation but also to make any new law or any new provision having the effect of law.

10. The third point is the meaning of the words "involving expenditure from the revenues" as distinguished from "financial obligations." Financial obligation undertaken ~~or to~~ be undertaken means definite appropriation of public revenues, in fact or specifically intended. It means that if any Act or its provision provides for the

acceptance of a financial liability, immediate or intended, by its own effect and operation, it is in the nature of a financial obligation. The point can be illustrated in this way. The Bengal Waterways Act was passed by the Legislature some years back. The Act provides payment of specific money from the Provincial revenues to the Waterways Board. Even though provisions of the Act are not yet fully brought into operation, the financial obligations are there and will have to be undertaken as soon the Act is fully given effect to. This Act therefore intends to create financial obligations to be undertaken. On the other hand anything in the nature of bringing expenditure in, not by its own operation but only as a *direct consequence* involves expenditure from the revenues; it does not mean direct or definite or immediate appropriation, sanctioned by the legislature, but something that must necessarily mean or involve expenditure as its direct consequence. Supposing a Bill proposes to create an autonomous Jute Board which will not receive any contribution from the provincial revenues, yet the local Government is required by the Bill to constitute the Board from time to time by holding an election by ballot on wide franchise. This must necessarily involve

Government in additional or new expenditure for elections—preparing list of voters, holding elections, etc. Supposing the Act again requires Government to establish a research Laboratory. This Bill will then come under the latter category, viz., it will involve expenditure from the revenues. Yet if the Bill only provided such duty as could normally be done by the local Government without such expenditure, the Bill will be outside its scope. If a proposal in a Bill involves expenditure only remote or only as a possible contingency, it is not involving expenditure from the revenues. For there is hardly any Act of legislature which may not mean expenditure in some form or other. The border line between what involves and what does not involve expenditure will be determined with the growth of conventions, but as a working basis, the above is a fair formula.

11. The next is the meaning of the word "revenue." Under Section 136, revenue of a province "includes all revenues and public money raised or received by a province"; it means all kinds of receipts of Government, no matter what the nature of their sources is; it includes both the ordinary revenue as well as receipts from other sources, what is usually incorporated in capital accounts,

such as, loans, deposit, receipts from commercial undertakings, etc. It includes fines and penalties which are received by the Government.

12. Analysed and dissected, Section 82 therefore means that—

(A) The following Bills or any amendment making the following provisions cannot be introduced or moved except on the recommendation of the Governor, i.e., except on the responsibility of the Executive Government and that no private member can therefore bring in any such Bill or give notice of any amendment to any Bill without the recommendation of the Governor, viz., which—

(1) imposes or increases any tax,

(2) regulates the borrowing of money or gives any guarantee, by the province,

(3) provides for or affects any appropriation of public revenue, and

(4) declares any expenditure to be expenditure charged on the revenues of the province or increases such amount.

(B) Any Bill with any such aforesaid provision cannot be initiated in a Legislative Council.

(C) There is no bar to any amendment being made to a Bill, otherwise duly brought up before the Legislative Council, *without changing its character*, even though the amendment contains any of the aforesaid provisions. But all such amendments must have the recommendation of the Governor before it can be introduced or moved.

(D) By the explanatory clause in Section 82(2) any Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fine or other pecuniary penalties or for the payment of fees for licenses or fees for services rendered; but if such fines, penalties or fees are credited to the revenues of Government, any proposal to appropriate such fines, penalties or fees will be governed by the previous provisions, viz., it cannot be introduced or moved except on the recommendation of the Governor and such a Bill but not amendment shall not be initiated in a Legislative Council.

(E) A Bill which does not provide for appropriation of revenues by its own operation but involves the province expenditure from the revenues as its direct consequence can be introduced in any Chamber, Council

or Assembly, but unless the Governor recommends to any Chamber the consideration of the Bill, it cannot be passed; this governs only a Bill but not amendment to a Bill otherwise duly brought up. But such amendment must not change the character of the Bill.

13. Possibly it may be argued that the latter part of Section 82(1)(*b*) is applicable, only to the case of a Bill or amendment making provision for amending any existing law, that is to say, it is applicable when it is in the nature of changing or amending any existing enactment or rules or regulations, ordinances, bye-laws, etc., but is not applicable to a Bill intended to promulgate a new law altogether. A moment's scrutiny will show that this contention cannot be correct; for in that case the position will be that a Bill, which intends to bring about any change or amendment in existing law with respect to any financial obligations undertaken or to be undertaken by the province, cannot be initiated in the Legislative Council, but a new enactment which for the first time creates a new financial obligation, provides for a new appropriation can be initiated in the Legislative Council. If it is to bring about a change or modification in an existing statutory appropriation of public

revenues it cannot be initiated in the Council, but if it is for new appropriation of public revenues it can be! This was never the intention of the White Paper, the Joint Committee or the Parliament which definitely intended that appropriations of all character of the public revenue, money Bills of all kinds should be initiated in the Assembly only. It will be seen that a money Bill under the definition in the House of Commons includes a Bill for supply and appropriation of public money or subordinate matters incidental thereto. From the intentions of the Parliament, it is clear that what was intended was that the initiation of all Bills for any appropriation of public revenue, whether it is by change of an existing law or by promulgating a new law, will be in the Assembly. And this is in conformity with the constitutional position of the lower House in any system of parliamentary democracy with bicameral legislature. If it was intended to limit its scope only to existing laws, the word *existing* would have been used in the Section, just as it finds place in the definition clause. The fact that the term is "the law", instead of "existing laws" clearly indicates the wider import of the term than merely existing enactments.

14. There is only incidental point arising out of these discussions and probably it will be better understood with reference to concrete facts. The Bengal Legislative Assembly has just passed several Bills—Ministers' Salary Bill, Members' Emoluments Bill, etc. All these Bills create financial obligations and come under Section 82(1)(*b*).

The Government proposed Rs. 125 as the salary of members in the Bill. A member proposed an amendment in favour of Rs. 150 which was passed. Such an amendment will of course require the recommendation of the Governor. But if there was an amendment in favour of a reduction, say, for Rs. 100, would it still require the recommendation of the Governor? Strictly within the letter of the law, even such an amendment would require, but there is something like implied recommendation. If the Governor has recommended Rs. 125 as the salary, it would be correct as a matter of constitutional convention to hold that any amendment for reduction to a lower figure has the recommendation of the Governor. Such recommendation can be constitutionally taken to be implied in the recommendation of the higher figure.

15. There is just one difference in procedure. Section 82(3) requires recommendation to the Chamber and whereas Section 82(1) merely requires recommendation. In the latter case it would be sufficient if the Minister of Government merely mentions in giving notice that it is on the recommendation of the Governor, but the recommendation to the Chamber must be in the nature of a formal communication to the Chamber, i.e., to the Speaker or to the President, as the case may be.

16. It would be for the Speaker to decide in this Assembly as to whether a Bill or an amendment comes within the provision of Sections 82(1) and 82(3) and while the applicability of Section 82(1) would probably not be difficult, it would not be so easy in the case of a Bill which if enacted and brought into operation would involve expenditure from the revenues of a province. In the circumstances, if any Bill, or amendment is admitted without any recommendation of the Governor, as required under Section 82(1) or 82(3), as the case may be, the Minister-in-charge of the Department concerned should raise an objection at the earliest possible and appropriate opportunity

before the House, but it would facilitate matter if in the meantime necessary steps are taken on this behalf.

17. One more point about Section 82(3). A Bill involving expenditure from the revenues of the province cannot be passed by a Chamber of legislature unless the Governor has recommended to that Chamber the consideration of the Bill. Such Bills can therefore be introduced in a Chamber without the recommendation of the Governor and technically it can also be taken into consideration though not passed without such recommendation. But it would mean only fruitless waste of time for a Chamber if the recommendation of the Governor is ultimately refused after a Chamber has passed through the consideration stage. A convention should therefore be followed that the Executive Government should come to a decision, immediately after such a Bill is introduced as to their attitude, so that in case the recommendation of the Governor is refused, the House may have an early notice and may not unnecessarily waste its time in considering a Bill which cannot in the last stage be passed in the absence of the Governor's recommendation.

## Ruling as to how far an amendment within the scope of the Bill.

On Tuesday last when the Bengal Tenancy Bill was under consideration, a question was raised as to whether certain amendments were within the scope of the Bill and I promised to give my decision to-day. I have since then looked into the matter, as far as it was humanly possible to do so within the short time.

The question as to whether an amendment is within the scope of the Bill is not altogether free from difficulty and the matter is rather intricate and complex. No handy reference is easily available and one has to look up for practice and precedence to the numerous volumes of reports of parliamentary and legislative proceedings both in India and in England. It should also be realised that we are still so early in the life of the newly constituted Legislative Assembly. And the experience that we shall gradually gather will be our best guidance for the future. I do not therefore propose to do anything more than indicate the broad outline of the principles for our present purposes.

Under Standing Rule 44(*1*), an amendment must be relevant to and within the

scope of the *question to which it is proposed*. Now "relevancy" is of much wider connotation than "scope" and what is relevant may not be within the scope. Both these tests must be satisfied before an amendment is in order.

Broadly speaking all amendments are out of order if they are not relevant to the Bill. A Bill which is limited in aim, scope and object cannot by means of amendments create any more extensions of rights beyond the principles and the provisions of the Bill. Neither is it open to insert new principles beyond those which a Bill seeks to affirm or enact. An amendment which cannot be properly proposed to a clause of a Bill and not relevant to it, having regard to its subject-matter and context, is irrelevant to the clause itself, though it may be possible to have this amendment as a new clause, if within the scope of the Bill.

The scope of a Bill has to be determined with reference to its preamble and its aims and objects and with due regard to the citations and provisions in the Bill itself. It is in consideration of these three together, not taking any one in isolation, that an amendment relating to the scope of a Bill has to be scrutinised.

In this connection I shall draw the attention of the House to the difference in practice as to the nature of the preamble in the House of Commons and in India. To-day in England the preamble does not enunciate the principal reasons for the enactment in public Bills generally, though there are exceptions, such as, Government of India Act of 1919 and the general form is "Be it enacted by—" without any specification of the objects, whereas in India the preamble gives the reasons for which the Bill is sought to be introduced and the form is "Whereas it is expedient that—such and such things should be done, it is hereby enacted, etc." and this difference must be of some bearing on the question before us.

If a Bill has an "open" preamble, i.e., if it amends an Act without any reservation (e.g., Whereas it is expedient to amend— Act), amendments to all the sections of the Act will be generally within the scope of the Bill. It would throw the whole law into the crucible, expose to amendment, not merely the particular provisions which the introducer of the Bill desires to alter, but all other provisions of the law which appear to be in any way open to criticism. On the other hand, if a Bill has a "closed preamble", viz., the Bill seeks to amend

only certain sections of an Act or an Act in any particular manner (e.g., Whereas it is expedient to amend—Act, in the manner hereinafter appearing) amendments to other sections of the Act, due regard being paid to the preamble, the Statement of Objects and Reasons, the citations of the Bill will be out of order. Amendments in furtherance of the objects of the Bill should be within the scope, and all foreign matters will be out of order. The tests I would apply in deciding the amendments with reference to the scope of a Bill are—

Whether a secure peg can be found in the Bill as originally introduced on which to hang the amendment; whether the case for the amendment, viz., the argumentative justification for it depends substantially on the provisions of the Bill as introduced and does cohere with the rest of the Bill. On the other hand, these tests should not be rigid and narrow as to deny the House the opportunity of giving a workmanlike design to the scheme of the Bill as introduced.

The present Bill can be divided in three parts, (1) the repealing provisions, (2) the modifying provisions and (3) the new inserting provisions. There are certain other provisions merely of consequential character and it is not necessary to enumerate them.

It is a common ground as brought out on the floor of this House that this Bill does not aim at giving any more right to the under-raiyats as such, beyond giving occupancy under-raiyats the same right of transfer as occupancy raiyats. Any incidence of the under-raiyat, any incorporation of new rights for under-raiyats as such and not for under-raiyats with occupancy rights would thus be obviously out of order.

Again if in an Act, different subjects are classified under different chapters, and a section dealing with one class of subjects is sought to be amended by the Bill, amendments extending the scope of the section and affecting the clauses other than those mentioned in that chapter should be out of order. For example, in the Bengal Tenancy Act different chapters are devoted to different clases of raiyats, namely:—

Occupancy raiyats (Chapter V), non-occupancy raiyats (Chapter VI) and under-raiyats (Chapter VII). The Bill seeks to amend certain sections in Chapter V. Any amendment which would affect any other class of raiyats, such as under-raiyats, not included under Chapter V, would be outside the scope of the Bill.

Again due regard must be paid to the Statement of Objects and Reasons. For

instance, if it is said that the purpose of the Bill is to allow structures to be built solely for the religious purpose, any amendment which would allow structures to be built for any purpose not solely religious would be held to be out of order.

This brings us to the question as to how a section which is touched by the Bill is open to amendment. Every such question has to be decided on its own merits. If the Bill seeks to change the proviso of a section, to give a new character to the section, the whole section may be open to amendment, as a change in substance in proviso may change the whole design of the section. But if it is merely to improve the drafting or to make the intention more clear, amendments of a drafting nature which may further improve the language of that section may be admitted but amendments which change the substance are out of order. To give a concrete instance, it is proposed to substitute the word "raiyat" by the word "landlord" in Section 48E, obviously to make the real sense and import of the word clear. This is a pure drafting matter and any other change of substance will be out of place.

The general principle is that amendments must be relevant to the question upon which they are moved. It follows from the nature

of an amendment, that its contents ought to have some bearing upon the subject introduced by the principal motion; further every amendment must be drawn up so as to leave the question, if altered in accordance therewith, in an intelligible form. The requirement of relevancy extends to an insistence upon each amendment being related to the particular clause in connection with which it is moved. All amendments must also be relevant to the scope of the question. This is, however, subject to this that anything which is of a consequential nature or anything which is necessary to make a clause a workmanlike job, comes within the scope of the question and is relevant to it, but such relevancy must mean that it bears some relationship to the question which is specifically put before the House.

I should only add that amendments are never intended to be a substitute for new legislation and they cannot be so, for it will otherwise deprive the members the right to give their thought, consideration and time to their provisions, which they would be entitled to do if they were in the form of a Bill. The members get much more time to propose changes in a Bill. They can consider upon the substantive provisions of a

Bill as to whether public opinion is to be consulted or not, whether it requires reference to a Select Committee. A Bill may receive altered character and design after circulation. In the Select Committee it may receive a new shape and form within the scope of its principles. Members are also normally entitled to longer notice for a Bill than for amendments. But amendments give much less scope to the members in their task of critical analysis.

The fundamental principle, almost interwoven everywhere with the basic framework of any constitution is that the law-making power of the legislature has always to be exercised with due caution and scrutiny and legislation always involves a lengthy process of procedure. For a legislature is the highest expression of the will of the sovereign; it can overthrow even the fundamental principles and in every country continually infringes on the rights of the citizens as embodied in the existing laws of the land. Once a Bill is therefore in a particular form before the legislature, it is a salutary principle that there is no intention to make any alteration in the laws beyond what is explicitly declares, either in express terms or by clear implication. In other words, a Bill must for the time stand

by its immediate scope and object and all other matters outside these limits must remain undisturbed until fresh proposals are brought up in the form of a new Bill. A Bill has therefore to be kept within limits of its scope of its objects and reasons and must not disturb the other existing laws beyond what its scope requires. Any departure from this principle may throw the entire body of laws into sudden jeopardy and there will hardly be any line of demarcation between the legislative expression in a parliamentary democracy and the arbitrary will of a tyrannical sovereign.

It is not necessary for me at this stage to say anything more than indicating the general principles which I wish to follow in connection with this Bill in admitting the amendments. The specific items will be dealt with at the proper places and I shall be very glad to hear if the members concerned have anything to say with respect to their motions at the appropriate time and place.

**Ruling as to the effect and implications of a motion for reduction of any grant in the annual financial statement when carried.**

On Monday last a question was put to me as to the effect and implications of a cut

motion as to whether such a cut motion being carried means a censure or non-confidence in the ministry. I promised to give my considered views in the matter later.

The fundamental convention in a democratic constitution working under any system of responsible Government is that, for the conduct of the executive and for the entire administrative and legislative actions and policy of Government the Ministers are immediately and directly responsible to the legislature and ultimately to the electorate. In practice this responsibility to the legislature is enforced by a vote of censure or of want of confidence or by defeat on a vital Government measure. Every one of these events implies that the ministry has no longer the confidence of the House and its necessary consequence is either the resignation of the ministry and the acceptance of Government by the opposition or a dissolution and an appeal to the electorate. The theory behind the dissolution is that the Government is so convinced that it is right that it presumes the opinion of the legislature to be contrary to the wishes of the country and therefore decides to get the decision of the legislature tested by the verdict of the country.

It is now a settled convention of the British constitution that not only a vote of no-confidence but a vote on any issue of importance is also fatal to the continuation of the ministry in power. It is of course for the ministry to decide as to what is a vital vote. In practice it may ignore and in fact does ignore defeats on a comparatively minor issue on the assumption that it does not necessarily imply loss of confidence. But even such defeat, however trivial, if not fatal, is damaging and is usually taken as a note of warning for the weakening of its prestige and position, in as much as it is a definite weakening of the strength of its party ties. Tactically it is considered desirable for the Government not to accept defeat readily, for if a Government allows itself to be overridden even in minor matters, it encourages independence in its members which might lead to a more serious repercussion resulting in the ultimate defeat of Government on vital issues. Modern Governments, therefore, tend to treat most questions as questions of confidence and try to avoid defeats as much as possible. But the defeats do come now and then and it may be interesting to note the many instances of defeats not being accepted in the British constitutional history.

Sir Robert Peel's Government was defeated in 1834 on an amendment to the Address. From 1834 to March 1840 the Whig Government was defeated 58 times in the House of Commons. In 1841 it was defeated on the sugar duties. In 1853 the Coalition Government was defeated three times in one week. Lord Rosebury's Government was defeated on a snap vote in 1894. Mr. Balfour's Government was defeated in the Committee of Supply on the Irish question in 1905. Mr. MacDonald's Government was defeated ten times between January and August 1924. In none of these cases the Government of the day resigned or appealed to the electorate as a consequence of these defeats. In 1924 Mr. MacDonald enunciated the policy of such defeats, to the extent to which the Government could suffer defeat on its own proposals, but it must be remembered, it was then a minority Government, allowed to continue on sufferance. This is what Mr. MacDonald said:—

"The Labour Government will go out if it is defeated upon substantial issues, issues of principle, issues which really matter. It will go out if the responsible leaders of either party or any party move a direct vote of non-confidence, and carry that vote. If the House on matters non-essential, matters

of mere opinion, matters that do not strike at the root of the proposals that we make, and do not destroy fundamentally the general intentions of the Government introducing legislation—if the House wish to vary our propositions, the House must take the responsibility for that variation—then a division on such amendments and questions as those will not be regarded as a vote of no-confidence."

What the Government will, therefore, treat as a matter of sufficient importance to warrant resignation or dissolution is primarily a question for the Government. It is based on the supposition that the opposition can always test the opinion of the House by a direct vote of no-confidence. Jennings in his "Cabinet Government" lays down four factors which determine the attitude of Government to a parliamentary defeat. The first is the loss of its prestige, the second is the strength of its own cohesion, the third is the nature of the issue on which it has been defeated and the fourth is the importance of the proposal or matter on which it was defeated. A defeat, therefore, on an important part of the budget is obviously too important to be passed over. A definite statement that the Government will resign if a proposal is not accepted is a

notice that the Government treats the motion as one of confidence. The circumstances may suggest that the defeat is in substance a vote of censure. Every one of this is a question to be judged on its own merits and beyond the principles outlined, it is not possible to give any more guidance.

The question remains as to to what extent a member of a Government party can discuss grievances and move cut motions implying non-confidence of the Government proposal or policy. It has been the contention of the Opposition in this House that a member belonging to Government party has no right to initiate budget cut motions or even to move such cut motions at any stage. It is according to them a fruitless waste of time, as such cut motions even if moved will surely be withdrawn. It is impossible to lay down any general principle as to what extent a member of a Government party is free to do this. In law, in theory, every member of this House, to whatsoever party he may belong, is entitled to take the fullest advantage of the entire machinery and structure of legislature procedure. In practice, it depends on party strength, party discipline, party organisation and party cohesion as to how far a member of a party will be permitted to go counter to the

decisions of his party or to act as a free agent. But an answer to this question can only be given if we know what is going to be our attitude as to the future Government of this country. Should the legislature compose of individual members each of whom will take thought of the desirability of each proposal and will vote accordingly, or should the members vote according to the party decisions and the Government of the day carried on party principles. On the one hand the party system is said to be the best mechanism yet devised for the running of democratic constitutions responsible to the legislature and on the other hand, outside the active forum of party politics, there is a growing volume of opinion specially among the intellectual thinkers that party system inevitably leads to measures being discussed and voted not upon their intrinsic merits but upon the extraneous circumstances of its origin and label. It is not for me to say as to how the future will be evolved, but if the constitution is to be worked more or less on the party system, the convention is that all measures will be judged from party labels and voted according to party alignments and that no party will ordinarily allow itself to be openly criticised and assailed on the floor of the House by its party

members. Criticism from within its ranks is much more dangerous and specially fatal to the continuance of any party than criticism from without.

In a parliamentary party system it is for the Cabinet representing and leading a party that has a majority in the House and for its members to state the arguments for the Government policy and for the Opposition criticising and striving to discredit and supersede the party in power to state the arguments against, so that by the independent working of many minds on the same problem from different angles many aspects are brought to light and the legislature is enabled to reach a just and considered view. There are of course grave exceptional circumstances which lead to understandings behind the Speaker's chair when the Opposition does not oppose and allow measures to be passed through, but these are matters of momentous concern which are never discussed on party lines. But otherwise in a party system the entire structural form is so designed that in the open the Government and the Opposition are the two contending parties and their members must broadly be under their respective flags.

In such a circumstance Government is run by the opinion of the party in power, formed

in its party organisation, and subjected to searching criticism by the Opposition in the House. The theory is that the supporter of Government can always make his views heard and felt through the party and refrains from an open opposition on the floor of the House; while the Opposition may, and not infrequently does, by its criticism, presented in such a manner as to influence opinion in the ministerial parties, induce the Government to modify proposals it has made. The contention of the Opposition that the Government party has no place in the moving of cut motions is thus the correct position in an well-developed party system of Government, as such cut motion being carried means defeat of the Government proposal.

The necessary corollary to what has been outlined before is, as has been stated by Davenport that the Cabinet can tolerate criticism of its budget, it can probably even survive the carrying of an adverse motion on the amounts of money it hopes to raise, it cannot as a rule survive one on the amount of money which it deems necessary to spend. On the other hand there is the inevitable danger, more and more realised by all thinkers that the logical outcome of any such

rigid convention inevitably means that matters which are and should be debated from the point of view of finance are debated from the point of view of politics. The discussion of the financial affairs will always be debated and voted from purely partisan and party view points. Strict merits of economies will hardly be discussed in such circumstances detached from its political colour and the nation may have to pay very dearly, what it should not on grounds of economy, which it must on grounds of politics. On the other hand it is said that criticism of Government by its own party members is always a compelling factor to modify its attitude, to qualify the application of its principles without overthrowing the principles themselves and to agree to look over its shoulder much more quickly than criticism from without. In any case, democracy in England has been worked on party lines. Government measure to be always accepted by the party in power, opposed by the party in opposition has been the governing keynote. But even there, with many opportunities of budgetary criticism—it is said there are eighteen opportunities—the fact that year after year the estimates emerge from the House of Commons exactly the same as they were

presented, as if there was not a single item amidst millions and millions which should and could have been avoided, not a single expenditure which was unnecessary has provoked a good deal of critical thoughts and comments. It has been realised that however honest and just the economist may be in proposing a diminution of expenditure required for supply on purely financial grounds, the matter will still be debated from the point of view of politics and not of finance. Under such condition parliamentary control of public finance by debates is reduced to an absurdity. On the other hand it is said that few questions can be debated with adequate knowledge and a parliament with near about 650 members occupied with other works and interests and frequently absent from the Chamber during discussions, with closely restricted time-limit with no means to know the complex details of estimates and expenditure and certainly nothing to guide in the nature of expert assistance or to judge the ultimate repercussion of a deletion, with no opportunity to examine witnesses, should be the last body to go behind the deliberate decision of Government in budget. In the stress of war when economies were urgently called for in every branch of administration this aspect of the

criticism and controversy was the subject-matter of a parliamentary enquiry. The National Expenditure Committee of 1917-18 very carefully enquired into the question of parliamentary control over national expenditure and they were definitely of opinion that the existing procedure of the House of Commons is inadequate to secure proper parliamentary control over the national expenditure. "The House will not be free to give them support so long as the present convention continues, which introduces into every division on a proposal of the Government of the day—however unimportant however remote from broad considerations of national policy—the question of confidence or want of confidence in the Government. It is plain that if, on a division of some minor economy in a departmental estimate, a majority adverse to the Government is to be regarded as censure, even as a reason for its resignation, or for subjecting the country to a general election, the smaller issue must be completely eclipsed by the larger and that a decision of the merits of the particular question must become impossible. Only when the House of Commons is free, not merely in theory and under the forms of the constitution, but in fact and in custom, to vote, when the occasion

requires, upon the strict merits of proposed economies, uncomplicated by any wider issue will in its control over the national expenditure become a reality." The Committee, therefore, recommended that there should be appointed in each session two standing committees on estimates each consisting of 15 members and if possible a third if experience shows this to be desirable with the duty of considering the annual estimates and to report to the House any economies which they regard as desirable without raising questions of policy and it was further recommended that it should be established as a practice of parliament that members should vote freely upon motions of reductions made in pursuance of the recommendations of the Estimate Committee and that the carrying of such a motion against the Government of the day should not be taken to imply that it no longer possessed the confidence of the House. There are other recommendations about this but as far as I am aware these recommendations have not yet been given effect to in so far as the right of free voting is concerned.

But with all these, in England the party system and Government on party lines have intelligent and alert public opinion always worked successfully as there is always an

assessing measures on their own merits and at their proper perspective, and within recent times there have been several instances of Government of the day being forced to come into line with public opinion, much against its own decision, by sheer weight of public opinion.

The National Government of 1934 introduced the Incitement to Disaffection Bill to provide powers to protect the armed forces from propaganda. They had an unprecedented majority in the House yet there was such a widespread outcry in the country and modern techniques of propaganda—press articles and letters, pamphlets and meetings —were so vehemently used to attack the Bill that Government soon realised that it was not gaining strength and substantial amendments had to be accepted and the Bill was passed very different from the Bill as presented, by sheer force of public opinion. In the recent case of the Anglo-French proposals for a settlement of Italo-Ethiopian dispute in 1935, the proposals were agreed upon by the Foreign Secretary and the French Prime Minister, presented to the Cabinet and accepted, but immediately there was a spontaneous outburst in the country and on all sides of the House, and with a comfortable majority of 250 as a result of general

election only three weeks before, the public outburst was so strong that the Cabinet had to reconsider the situation and Sir Samuel Hoare had to resign as a desavowal of the entire people against the foreign policy.

To maintain themselves in power there has thus always been a strong sensitiveness to public opinion and compelling obedience to it and all the instruments in the possession of a free people are always exercised to make its wishes and views effective if it chooses to; the temperature of the country determines the temperature of the House and the temperature of the House determines the activities of Government. But it is behind such strength of public opinion that party system has successfully worked in the British constitution amongst many conventions, understandings and agreements between different sections in the House, which no writer can easily formulate.

It is not for the Speaker to say whether the Government of this Province should be carried on party principles or otherwise. I have tried to give an indication as to how it should work, if it is decided to work on party lines. I have also placed before the House its likely effect on financial control and scrutiny by the House and it should be for the House to determine, should it work on

party lines, whether we should not bear in mind the recommendations of the Parliamentary Committee on National Expenditure of 1917-18. But profited by the report and the recommendations of the Committee I have so far allowed cut motions to be moved by the Government party, in the belief that they will not be pressed to a division, to enable the members of the Government party to suggest economies, to draw attention or to get a statement of Government policy and programme and they will be free to do so unless they themselves wish to follow the strict party convention, as outlined above.

## Ruling on the competency of the Legislature to pass certain taxation measures.

The question for decision is whether the provincial legislature is competent to legislate for the continuance of certain taxation measures due to expire about the end of May, 1938, and the specific matter before me is with reference to bills of lading.

The report of the Joint Select Committee and other Parliamentary papers and proceedings will show that the scheme of provincial autonomy has been so framed that the executive and the legislative authority of the province may act within a precisely definite

jurisdiction and in an exclusively provincial sphere broadly free from control by the federal Government or the federal legislature and with a specific allocation of resources. This was a definite departure from the previous system under which the provincial Government exercised a devolved and not original authority. But any precise allocation of the sources of revenue between the federation and the federal units, each with independent power, was not an easy task and while an attempt was made as far as possible to aim at a rigid separation of the sources of the revenue between the Centre and the Provinces, there was also the problem of placing adequate resources for the development of the needs of the provinces with their inexhaustible field for social and economic services. The working of the reforms of 1920 made it abundantly clear that a scheme of even radical reforms cannot have any chance of reasonable success with inadequate financial resources. The financial adjustment between the provinces and the federation had therefore to be so made that the difficulties of the provinces might not be aggravated to a dangerous extent with the inauguration of the new constitution.

Working on these principles and considerations, the India Act of 1935 first

separated outright certain sources of revenue and allocated them either to the province or to the federation. Certain heads of revenue which were till then levied and applied for the purpose of a province were in the process of separation transferred to the federation, which would have crippled the resources of the provinces at the very start of provincial autonomy. Section 143 of the India Act, therefore, specially provided that any taxes, duties, cesses or fees which were being lawfully levied by the provinces immediately before the introduction of the new constitution, by virtue of a law in force on the first day of January, 1935, will continue to be levied and applied for provincial purposes, until provision to the contrary is made by the federal legislature, notwithstanding such taxes, duties, cesses and fees being included in the federal list.

But this by itself was no solution of the entire difficulty. Some of the provinces at least had increased and new taxation levied under various Acts, but enforced with effect from a date subsequent to the 1st of January, 1935, and such provinces with the introduction of provincial autonomy would, it was feared, have some of their resources affected, which were till the 1st of April, 1937, available to them, where such taxes were

included within the federal list. Under section 310, His Majesty's Government had the power by an Order-in-Council to make temporary provisions to enable the business of the provincial Governments to carry on for a limited period and, therefore, on the 18th of March, 1937, India and Burma (Transitory Provisions) Order was promulgated under the provisions of which reference to the 1st of January, 1935, in section 143 of the India Act was deemed to mean 1st of April, 1937, for a period of two years, but subject to this nothing in the provision of this Order-in-Council "shall continue any taxation beyond the time it would continue if the India Act had not been passed."

Let us now examine the case of the stamp duty on bill of lading. The Indian Stamp Act of 1899, in Schedule I, Article 14, imposed a stamp duty of four annas on bills of lading. By item 20 of Schedule I, Part 2 of the Devolution Rules, promulgated under the Government of India Act of 1919, non-judicial stamp and judicial stamp became provincial subject of legislation, subject to the right of the Indian Legislature to legislate in certain manner. Rule 14 of the Devolution Rules further allocated all receipts accruing in respect of provincial

subjects to the provinces. Stamp duty including duty on bills of lading thus became a source of provincial revenue. Under Bengal Stamp (Amendment) Act of 1922 a stamp with duty of six annas was placed permanently on bills of lading. On the 1st of January, 1935, bills of lading were thus liable to a stamp duty of six annas for provincial purposes.

By clause (7) of section 7 of the Bengal Stamp Amendment Act of 1935, the stamp duty of six annas was increased to eight annas to be operative for a period of three years with effect from the 1st of June, 1935. This increased duty of two annas extra would cease to operate from the 1st of June, 1938, whence the original duty of six annas will revert. The Bengal Expiring Laws Bill, as originally passed in this Assembly, proposed to retain this increase of two annas substantively with effect from the 1st of June, 1938, until of course federal legislation may intervene in terms of the provisions of section 143 of the India Act.

The legal position immediately before the introduction of the new provincial constitution was that stamp duty on bills of lading was being lawfully levied under Bengal Stamp (Amendment) Act of 1922, as amended by Bengal Amendment Act of 1935. The

right to levy this stamp duty was still under the provisions of the Act of 1922, which was in force on the 1st of January, 1935, but the amount of duty was determined by the Act of 1935, which came into operation after the 1st of January, 1935, and here it may be specially noted that the Act of 1935 does nowhere give any right to collect this duty on bills of lading, beyond determining the amount. The column noting the description of the taxable instrument in Article 14 of Schedule IA of the 1922 Act was not in any way changed or substituted by the Act of 1935—only the column fixing the proper stamp duty was changed for a period of three years, the intention being that the entry of the amount of duty in the Act of 1922 was to revert after the lapse of three years. I hold therefore that in terms of section 143 of the India Act it was the Act of 1922 which was still in force on the introduction of the new constitution and the right of levying the stamp duty was by virtue of the power vested under that Act.

This contention is further strengthened by the fact that section 143 does not say that the amount of any taxes or duties levied on the 1st of April, 1937, must be under an Act in force on the 1st of January, 1937. It deals with the power of the province to levy

a tax and to retain a source of revenue for provincial purposes and is only indicative of the power of the provinces to retain certain sources of revenue and bears no relationship to the quantum of such tax. The provinces are empowered to retain for provincial purposes such taxes, duties, cesses or fees as are included in the federal list, until federal legislature provides otherwise—to retain such powers as was exercised on the introduction of the new constitution under a law in force on the 1st of January, 1935. As the stamp duty on bills of lading was being levied immediately before the introduction of the new constitution under the law of 1922, which was in force on the 1st of January, 1935, I hold that this legislature has full power over bill of lading until provisions to the contrary is made by the Indian Legislature.

Now the Order-in-Council went further than what was given to the provinces by section 143. Such taxes as were levied immediately before the introduction of the new constitution under a law in force later than 1st of January, 1935, were also to be retained by the provinces for a period of two years from the 1st of April, 1937—unless of course the federal law intervenes earlier. It is said that sub-paragraph (2) of clause (3)

which says—"Nothing in this paragraph shall continue any taxation beyond the time for which it would continue if the India Act had not been passed"—takes away the power of the province to continue a temporary Taxation Act. There is no doubt that sub-paragraph (*2*) of clause (*3*) of the Order-in-Council is a little difficult to interpret. But I take it, any interpretation must be consistent with the scheme of section 143 and the purpose of clause (*3*) of the Order-in-Council. The entire purpose behind these is to give certain additional sources of revenue to the provinces until federal legislature provides otherwise. If it is agreed that the sole purpose is to allocate certain sources of revenue *until federal law provides otherwise*, the Order-in-Council cannot mean to take away the power given in the first portion of clause (*3*) of the Order-in-Council, viz., to retain such sources for two years so long the federal law does not intervene. If the substantive purpose is to empower the province to retain a source of revenue until federal legislature provides otherwise, the only reasonable interpretation of clause (*3*) of the Order-in-Council is that the province has power to retain such taxes as were levied under laws in force from or after the 2nd of January for a period of two years and if

the law levying such tax expires within the period of the said two years, the province can take necessary legislative measure to keep it on for two years from the 1st of April, 1937. Supposing the Stamp Act for the bill of lading was not in force on the 1st of January, 1935, but came into operation from the 2nd January or thereafter. Even if such a law was a substantive permanent law, such levy could not be applied for provincial purposes beyond 31st March, 1939. If such law was a temporary law, in force, say up to December, 1938, it could not be used for provincial purposes thereafter, merely by the effect of the power given in the Order-in-Council for retaining it for two years, but that the provincial legislature must extend the operation of the law and continue the Act, up to the limit of two years, as defined. In other words, the Order-in-Council in such circumstances means that such taxes would not continue beyond the period for which it would continue, under the same law by which it is levied without fresh legislation and in any case not beyond March, 1939. The power to continue or retain for two years is not the automatic effect of the Order-in-Council, in case where such taxation is on the basis of a temporary Act, ceasing to

operate earlier, within the period of two years,—but that it must get sanction of a fresh legislation, subject to the intervention of the federal legislature at any stage. The continuance of the power to retain beyond March, 1939, depends whether the law was in force on the 1st of January, 1935; if it is a law in force after the 1st of January, 1935, the province can keep it for two years and even if the term of the law expires within the period of two years, the province can retain it by fresh legislative sanction up to two years. Until the federal law provides otherwise, even if a law in force on the 1st of January, 1935, expires, the province can keep it on by fresh legislative sanction. In the case of law in force after the 1st of January, 1935, it will revert to the federal list after two years from the 1st April, 1937, unless the federal law provides otherwise earlier. In the case of law in force on the 1st of January, 1935, it will remain a provincial source of revenue for any length of period until federal law decides otherwise. But in both cases such taxes must be actually levied by the province immediately before the commencement of the new constitution.

The question remains whether we have got the power to restore the stamp duty of eight annas instead of six annas. Section 143

does not say that the amount or quantum of any tax or duty is to be governed by the same law as was in force on the 1st of January, 1935, nor does it say that the continuance of the tax for provincial purposes after the 1st of April, 1937, must be on the basis of the same enactment. This section was not intended as any restrictive provision with a view to continue the same law or to deprive the legislature of the power to extend the operation of the law until of course the federal law intervenes. It does not mean that it must be the same provision, the same enactment and to the same extent and in the same manner. It only says that such taxes may continue to be levied and to be applied to the same purpose. It was not with view to keep the same law in force but to retain the same power in the provinces. If the province has therefore the power to continue to levy the tax, it can levy in such manner as it chooses. It can reduce the amount, it can increase the amount. Any other position would be inconsistent with the scheme of provincial autonomy.

There is just one matter which I need briefly refer to. It is said that the legislative authority of the province is solely on the basis of Part V of the Government of India Act and not on the basis of Part VII and

therefore this legislature cannot legislate unless this power is to be found within the four corners of Part V. This view forgets the fundamental corner-stone of the present constitution, viz., that no money can be levied without the sanction of the legislature behind. Under section 143, taxes levied under a law in force on the 1st of January, 1935, would continue to be levied and applied for provincial purposes until federal legislation provides otherwise. Supposing such a law was a temporary Act due to expire on the 31st of December, 1938, and the federal legislature does not make any contrary provision till 1950. Are we to suppose that in spite of such tax being a source of provincial revenue the provinces must lose this source of revenue in the absence of a fresh legislative provision even though the federal legislature does not come in to make any provision to the contrary till 1950 or will it be contended that the provincial Government will continue to levy the tax without fresh legislative sanction with effect from the 1st of January, 1939? That will be against the spirit of section 143 and the spirit of the constitution and I need only say that every Act has to be read as a whole and not by a compartmental division of chapters or by headings, headlines and

marginal notes, which are after all a convenient description of little statutory validity.

I admit that the question is not free from difficulty and all interpretations are often such that it may be possible to hold a different view, but where the principle of constitution is in favour of provincial autonomy, where for the stability of provincial finances, certain sources are given to the province, I should give the most favourable interpretation in favour of the province until the proper authority gives a final interpretation to the matter.

I hold that this legislature has full power to deal with stamp duty on the bill of lading, until the Federal Legislature makes any provision to the contrary.

**Ruling for presenting an address to the Governor under Rule 65 (Section 127) of the Standing Rules and Orders of the Bengal Legislative Assembly.**

Mr. Syed Abdul Majid and Dr. Sanaullah have given notice of a Resolution for presenting an address to the Governor under Rule 65 (Section 127) of the Standing Rules and Orders of the Bengal Legislative Assembly. The purport of the resolution is to express

the opinion of the House that it is incumbent upon Government to take immediate steps for the introduction of free and compulsory primary education in the province of Bengal including Calcutta and all other municipal areas and to express a further opinion of the House that while all parts of the province both rural and urban including the city of Calcutta should be called upon to contribute to the cost of primary education and should be included within the scope of one single Act, the cultivators of the province should be excluded from the incidence of any such scheme of taxation on the ground that they have to bear an additional commodity tax on jute to the extent of 3·50 crores of rupees. I am called upon to consider as to whether this resolution for the purpose of presenting an address in terms of the above is permissible.

Rule 65 does not mention the nature and scope of an address nor is there any guidance in our Standing Rules about this. Under the Government of India Act an address to the Governor is contemplated in section 90, when a message is received by the Legislature from the Governor enacting in his discretion a Governor's Act or sending the draft of a Bill for the purpose. The legislature in such circumstance may present an address

within one month with reference to the Bill or the amendments suggested to be made therein. On the other hand under section 88 of the Act, in the circumstance of the Governor promulgating an Ordinance during the recess of the Legislature, it is not an address that could be presented to the Governor but a resolution of the Legislature may be passed disapproving of such an Ordinance. There is thus a definite distinction made between a resolution of the House in section 88(*2*)(*a*) and an address from the House under section 90 (*2*). In the first, the Act of the Governor is an Act enacted on the advice of his Ministers and for all purposes it is an Act within ministerial responsibility whereas the Governor in the other case functions in his discretion. In view of these specific provisions and the distinction made between an address in the case of a Governor's Act and a resolution in connection with a Governor's Ordinance and in the absence of any specific rule outlining the scope of an address to the Governor, I have to look to the general principles underlined in the Government of India Act and to the Parliamentary Practice and convention in such cases. The Government of India Act contemplates certain functions to be discharged by the Governor in his discretion,

but subject to this, the entire executive administration of the province is to be exercised by Ministers responsible to the legislature who exercise the executive authority on behalf of His Majesty and in the name of the Governor. The Government of the province, subject to the discretionary powers of the Governor and other safeguards, is in essence a system of ministerial responsibility and I do not find any constitutional justification for the legislature to go behind such principle of ministerial responsibility and present an address to the Governor. The legislature has full power to enact laws, to pass resolutions for expression of its opinion on any matter of general public interest and such an expression of opinion in the form of a resolution has, I take it, for its purpose an intimation to the executive of the wishes of the House. It appears that, in England, an address can be presented to His Majesty and the subjects upon which such address is presented comprise matters of foreign or domestic policy, administration of justice, confidence on the Ministers of the Crown, expression of congratulations or condolence and various other matters connected with the Government and the welfare of the country, except that it is not presented in relation to any Bill

pending in either Houses of Parliament. It should be remembered that in England such addresses are not always of a formal nature and are only permissible on the constitutional principle that His Majesty always acts on the advice of his Ministers and the King on all affairs of State does not function except on the advice of his Ministers. As a matter of fact the King in his speech from the throne always announces the policy and programme of Government and the King's speech is discussed as embodying the policy of the Executive. But even there such addresses are not presented unless it is on a matter of momentous importance and could not be done through any other procedure. Here in India the Governor has a dual function—one as the constitutional Governor, the other in the discharge of his functions in his own discretion. It would therefore not be desirable to introduce the procedure of presenting an address to the Governor in matters concerning the executive administration of a province which ordinarily lie within the scope of ministerial responsibility. The Government of India Act contemplates such presentation of address in section 308 in connection with any proposal for amendment of certain provisions of the Act or Orders in Council, but here also the matter

is outside the scope of ministerial responsibility. I am therefore of opinion that the scheme of the constitution and its spirit are such that we should not introduce the procedure of presenting an address in matters in which the Governor functions as the constitutional Governor unless it be of a purely formal nature such as, an expression of congratulations or condolence, etc., or a momentous matter of national concern. Matters which can be dealt with under ordinary rules of discussion in the Assembly and within the scope of ministerial responsibility should not come within the purview of an address, and generally speaking, controversial matters in which there might be scope of any difference of opinion should not be presented to the Governor, unless they come within the specific provisions of sections 308 and 90 of the Government of India Act. Otherwise our Standing Rules contemplating discussion of matters of public interest in a specific form will be nugatory, for any one might then, instead of giving notice of a resolution, might give notice of an address and every matter which could be brought in in the form of a resolution would be brought in in the form of an address.

I am therefore of opinion that in view of the constitutional distinction made between

matters lying in the discretion of Governor and matters lying within the scope of ministerial responsibility and in view of the Government of India Act and our Standing Orders, the procedure of address is intended for such matters as lie within the scope of the Governor's powers in his discretion or for which there is no ministerial responsibility and for which the Assembly might desire to express and place its views before the Governor who is otherwise inaccessible to the Assembly. No address would therefore lie against any action of the executive Government as the law provides for action to be taken by the legislature in such matters.

## Ruling about the admissibility of the Bengal Money-lenders Bill, 1938.

The questions raised yesterday by the Hon'ble Member representing the Indian Chamber of Commerce are of considerable constitutional importance for the province. He has with great ability and clarity of reasoning raised three main issues before this House, viz.:—

*Firstly*:—That the Select Committee has extended the scope of the Bill and has gone beyond the essential principles of the Bill.

*Secondly*:—That the Provincial Legislature is not competent to legislate in relation to Banks, Corporations or Promissory notes and therefore some of the provisions of the Bengal Money-lenders Bill are beyond the powers of any Provincial Legislature.

*Thirdly*:—That this House is not competent to consider some of the provisions of the Bill without the sanction of the Governor, as provided for in section 299 of the Government of India Act of 1935.

Hon'ble Members will admit that the Bengal Money-lenders Bill is probably the most complicated Bill that has been brought up before the House since the inauguration of the present constitution, and it has undoubtedly been made still more complicated by the numerous changes made by the Select Committee. Within the short time at my disposal, it has not been possible for me to find out the correct bearings of all the changes made by the Select Committee and Hon'ble Members will realise that it is not humanly possible to do so until I have an opportunity to consider the provisions of the changes in greater details. At the same time it is only when such specific changes,

clause by clause, will come up for consideration before this House that it would be possible with reference to each specific provision to consider whether the Select Committee has gone beyond the scope of the Bill. If at that stage, the point is raised with reference to specific portions of the Bill, I shall give my decision on consideration of the contentions that may be raised before me. I may only note at this stage that this Bill is not a mere amending Bill; it is for the purpose of "regulating transactions of money-lending in Bengal". Therefore, amendments and provisions which are outside the scope on the Explanatory Memorandum or the Statement of Objects and Reasons may be within the scope in consideration of the citations in the preamble. With these remarks, I must leave the point to be raised at a later time and relevant stage. The question about the sanction of the Governor may similarly be raised when the relevant clause is under consideration by the House.

The most important contention, however, is that the Bill, at least in some of its provisions, is not within the scope of our powers under the Government of India Act of 1935. I may note at the outset that the question of

*ultra vires* or *intra vires* is a matter that can only be ultimately decided by authoritita-tive judicial decisions and my function is merely to examine the question in so far as it is necessary to decide the admissibility of the motions and amendments arising out of the provisions of the Bill.

Before I enter into details, it would be useful to understand the implications of the present Constitution Act. The corner-stone of the present Constitution is the autonomy for the provinces and the structural frame-work of the Constitution has been so design-ed that each of the Governor's provinces may possess an Executive and Legislature having an exclusive authority within the province in a precisely defined sphere broadly free from any control by the Central Government and Legislature. It represents a fundamen-tal departure from the old conditions of things under which the provinces could not function exeept to the extent of their delegat-ed powers or as agents of the Central authority, but to-day the Government of India and the Central Legislature derive their authority and power exactly from the same Constitution Act as the provinces. The provinces have now an autonomous legislative body with definitely demarcated

allocation of exclusive jurisdiction and the legislative powers are now distributed between the Federation and the province, each with an exclusive jurisdiction, with a concurrent list where the Federal law shall prevail over the provincial law, so that any provincial law to the extent of its repugnancy with Federal law in such concurrent sphere shall be void. But otherwise, in the exclusive Federal list the province has no power to legislate—in the exclusive provincial list the Federal Legislature has no power to legislate.

Where the Constitution Act thus provides for the functioning of *quasi*-sovereign legislatures and executives each must operate without impairing the independence of the other so that the provinces and the Federation may each have certain free, unfettered, unrestricted legislative functions. While the Constitution Act provides for the supremacy of the Federal Law where it is competent to enact or in the concurrent Legislative List Federal authority cannot in any way override the laws of the province within its own sphere. For the time being it can, therefore, be accepted without any challenge that there is no supremacy or

jurisdiction of Federal Legislature in matters exclusively belonging to the province.

The present question arises out of the items in List I and List II of Schedule VII, both exclusive lists. Whatever may be the nature of any apparent or real conflict between List I and List II, there can be no doubt that the intention behind these provisions was not to create any conflict but to provide for an exclusive, separate and distinct power for both the Federal and the Provincial authorities. But what is intended to be conveyed cannot always be expressed in precise terms with clarity and specially so in legal terms, nor is it always possible, to test every word and term in any legal draft with reference to the rest of the provisions in any legislative enactment. Law is always expressed in broadest terms and in compact language. Conflicts, therefore, always arise as to the exact meaning and scope of words and terms and in interpreting the statutory provisions of exclusive powers we have to interpret a Constitution Act in its broadest aspects, keeping the spirit of the Constitution before our view. If and where there appears to be an apparent overlapping of functions between two exclusive lists, we

must try to find out as to whether and if so to what extent, it is possible to reconcile the two and if by any interpretation, it is possible to separate the functions,—that must be taken to be the intention of the Parliament behind the provisions of two separate and exclusive lists as between the Centre and the province. If the field is clear, the Federal and Provincial Legislatures will function, each within its own sphere. But if there is still a blurred field and overlapping regions, the uncertainties cannot be determined unless the matter is settled and clarified by authoritative judicial pronouncements or the amendment of the Constitution.

Can it be said that because banking corporations or promissory notes come within Federal List, it means an implied prohibition for the provinces in all aspects of the activities of bank or in all phases of promissory notes and, therefore, even though money-lending is a function for the Provincial Legislature, money-lending when done by a Bank or when based on promissory notes is beyond the scope of the provinces? It may be noted that what comes within the Federal List is not banking business or banking activities as such, but incorporation, regulation, winding-up of banking corporations and the

conduct of banking business. Conduct of banking business is not the business itself. It means the organization and management of banks and corporation rather than their activities in business itself. One may, therefore, safely demarcate the boundaries, viz., while the incorporation, organization, management and closure of banks come within the Federal List, money-lending by banks and corporations is not a subject of Federal List, but that of the provinces. One is a question of business method and manner and the other is the business function and enterprise. If banks and corporations are not subject to the provincial legislation in money-lending, they will have to be excluded in many other activities of theirs which come within the Provincial List. Internal trade and commerce, manufacturing and production of alcoholic liquors, gas and gas works, ropeways, municipal tramways, inland traffic and waterways, production, supply and distribution of goods, and many others, when taken up by banks and corporations will stand exactly in the same position and will have to be excluded from the jurisdiction of the provinces. While private persons will come under the scope of the provincial legislation in all these subjects the corporation and banks will not come within the provinces.

In such circumstances the very purpose of an elaborate, exclusive Provincial List in a solemn Constitution Act will be more than stultified.

The question of promissory notes is not, however, free from difficulty. But if one carefully scans item 28 of the Federal List, one will notice that the purpose is quite different from what is now being contended to-day. Item 28 enumerates cheques, bills of exchange, promissory notes and other like instruments. The intention apparently is to give jurisdiction to the Federal Legislature on the legal incidents and ingredients of these instruments and in any case, item 28 of the Federal List, read with item 27 of the Provincial List must mean that money-lending comes within the provincial jurisdiction and matters like the following come within the Federal List, viz., to what extent cheques, promissory notes should be negotiable; how these instruments can operate as negotiable; to what extent and under what circumstances cheques, bills of exchanges and promissory notes would be valid in law. A cheque, promissory note or bill of exchange can be approached from various points of view—from the angle of contract, the legal right to recovery, and the liability to pay or repay, the incidents of enforceability, etc. In other

words, it can be approached from the point of view of its debts, obligations as well as its other legal incidents. So far as the element of money-lending and its incidental implications are concerned, which includes interest, it comes within the Provincial List, but other matters come within the Federal jurisdiction.

Provinces have now power to levy tax on profession, trade, callings and employments, to legislate on internal trade and commerce within the scope of their powers. Is it to be contended that because they are corporations or banks, they are not amenable to such taxes or are not subject to provincial legislation for purposes of internal trade and commerce? True, they are not amenable to taxes as such, as corporation taxes come within the Federal powers, but they are as much subject to provincial legislation in taxes and in all matters that are in the exclusive Provincial List, like every private citizen. Let it be remembered that in such cases it is not corporations as such that are taxed, but their activities that come within the scope of the provinces. If money-lending is done by them, they must come within the Provincial List, not as corporations or banks, not on promissory notes as such, but on money-lending as money-lenders.

We must remember that the distribution of powers and functions in the Government of India Act like these in all federations have followed certain well-known principles. Matters of unquestionably national interest and importance, matters which may affect the body politic of the entire country are left to the Federation; matters of substantially local or private interest have been left to the provinces while matters where uniformity of legislation is desirable, where diversity of laws will have a hampering effect to the country as a whole, have been left over in a common concurrent field.

On the other hand it would be unthinkable that a great Constitution Act ever intended that there should be two sets of laws to be promulgated by two legislative bodies, over same functions—private citizens by the provinces and banks and corporations by the Federation. It would be a legislative anarchy and cut away the very root of provincial autonomy.

It would not be out of place here to refer to some of the decisions of the Privy Council arising out of similar conflicts in legislative powers in the Colonies. Under the Canadian Law Federal Government activities are

beyond the scope of State Governments and State legislation, but judicial decisions have distinguished between Governmental agencies and functions in strict sense and ordinary business enterprises which happen to be conducted by Governments and the exemption has not been granted in favour of ordinary business enterprises, even though taken up by the Federal Government. It is now a well-settled principle enunciated by the Privy Council in Hodge *versus* Queen (1883) 9 App. Cases, 117, that subjects which in one aspect and for one purpose fall within the scope of Federal Legislature, may in another aspect and for another purpose fall within the scope of provincial legislation. The principle was based on the decision of the case of Russel *versus* The Queen (1), where the Privy Council laid down that in cases of conflict of jurisdiction, the essential principle is to determine the true nature and character of legislation in order to ascertain the class of subject to which it really belongs, and there may be an incidental trenching on another ground on literal construction of words, it is the primary matter dealt that determines the jurisdiction and any incidental interference does not in any way alter the character of the

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(1) (1881) 7 App. Cases, 829.

law. The principle laid down in Hodge *versus* Queen was accepted by Lord Haldane in John Deere Plow Company *versus* Wharton (1), Lord Atkine in the case of Gallagher *versus* Lyon (2) in approving the same principle that one must look at the "true nature and character of the legislation", "the pith and substance of the legislation", observed:—

> "If, on the view of the Statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field".

In the words of Lord Hobhouse in a Canadian case, Bank of Toronto *versus* Lambe (3) it cannot be conceived that when the Imperial Parliament conferred wide powers of self-government on great countries, it intended to limit them in any way. "Whatever power falls within the legitimate meaning" of an item of Provincial List, is what the Imperial Parliament intended to give; and to place a limit on it because the power may

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(1) (1915) App. Cases, 330..

(2) (1937) App. Cases, 863.

(3) (1887) 12 App. Cases, 575.

be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the Constitution Act. "The express words of an Act of Parliament which makes an elaborate distribution of the field of legislative authority between two legislative bodies and at the same time provides for the federated provinces a carefully balanced constitution", under which no one of the parts can pass laws for itself except under the provisions of the Constitution Act, must be very carefully interpreted. "If on the due construction of an Act a legislative power falls" within the scope of the Provincial Legislature, "it will be quite wrong to deny its existence, because by some possibility it may limit the range which otherwise would be open" to the Federal Legislature.

The Hon'ble High Court of Calcutta also laid down that:—Where in construing a statute, one must decide it not merely with reference to mere literal terms of the provisions but on consideration of the entire statute, in consideration of all other provisions and powers, the effect of one provision on another, the circumstances attending the passing of an Act and "the whole purport and scope of the Act to be collected from

various clauses other than the particular clause, the meaning of which is in dispute" (1).

In interpreting the British North America Act, 1767, in the case of Edwards *versus* Attorney-General for Canada (2) Lord Sankey in the Judicial Committee of the Privy Council laid down the principles of interpreting a Constitution Act—"Their Lordships do not conceive it to be the duty of this Board—it is certainly not their desire to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation so that the Dominion to a certain extent but within certain fixed limits, may be mistress in her own house as the provinces to a great extent, but within certain fixed limits, are mistress in theirs. The strict construction deemed proper in the case, for example, of a penal or taxing statute or one passed to regulate the affairs of an English Parish, would be often subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order and good Government of British Colony. Such Act should be on

(1) Punyendra Dev *vs.* Jogendra Dev, 64 C. L. J. 214.

(2) (1930) App. Cases, 124.

all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the object with which it purports to deal in very few words."

This principle of construction has been reiterated in two recent cases by the Privy Council, British Coal Corporation *versus* The King (1) and James *versus* Commonwealth of Australia (2). Lord Wright in the latter case made it clear that some breadth of interpretive method is to be applied to a Constitution Act and observed as follows: "it is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the viscissitudes of fact which from time to time emerge. It is not that the true meaning of the word changes but the changing circumstances illustrate and illuminate the full import of that meaning." In the case of the British Coal Corporation *versus* the King, Lord Sankey laid down that "in interpreting a constituent or organic Statute such as the Act (i.e., the British North

(1) (1935) App. Cases, 500.

(2) (1936) App. Cases, 578.

America Act), that construction most beneficial to the widest possible amplitude of its powers must be adopted".

It is now well settled that the mere literal construction ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the Statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated, that should be accepted in place of another which would defeat the very object of the Act, and is repugnant or inconsistent with the rest of the Statute.

It is on these principles that one can try to find out what is the scope of the respective powers under the provisions of the Government of India Act.

Money-lending being in the exclusively Provincial List, whoever does money-lending, bank, corporation or person must come within the scope of provincial legislation. Even though bank, corporation come within Federal subject, it means money-lending functions of these institutions come within the competency of the Provincial Legislature. If promissory notes come within Federal List, it means all other matters except the element of money-lending are Federal while money-lending comes within the provinces. The

object of the Act is not in any way defeated by such delimitation. On the other hand, if money-lending is not included, it defeats the object of the Statute in providing money-lending within the Provincial List, and corporations or banks would not cease to function if money-lending is controlled by the provinces.

Let us assume for the sake of argument that money-lending by banks or corporations is a federal subject while money-lending by others are provincial subjects. It is well known that there are some persons, institutions and firms in this province, as elsewhere, which are corporations or call themselves banks, and supposing the Provincial Legislature holds that they charge interests as high and extortionate rates of interest as some of the money-lenders, the provinces will have no control over their money-lending transactions. On the other hand the private money-lenders will immediately call themselves banks or form themselves into banks and corporations. The very purpose of the Constitution Act to empower Provincial Legislature to legislate on money-lending, and money-lenders with their high interest rates will be stultified. In any case money-lending will then be governed by two laws—banks and corporations by the Federal, private

money-lenders by the Provincial and this will eventually lead to most disastrous and grave social consequences. That cannot be the intention behind a great Constitution Act which provides utmost freedom to the Provinces whatever may be the nature of other safeguards and restrictions.

It has been said that the word "regulation" in item 33, is wide enough to include money-lending activities of banks and corporations and my attention has been drawn to a ruling of the Hon'ble High Court of Calcutta reported in 64 C.L.J., page, 212, where the Hon'ble High Court interpreted the words "to regulate". It may be noted that this is a case arising out of the Government of India Act of 1919 and the Hon'ble High Court interpreted the word "regulating" in section 80A, sub-clause (*3*) (*e*) ("regulating any Central subject") and section 80A sub-clause (*3*) (*f*) ("regulating any Provincial subject").

The question which arose in that case was the power of Assam Legislature in passing the Bijni Succession Act of 1931 as to whether a legislature had power under the provisions of the Government of India Act of 1919 and to legislate on individual cases as a local and personal Act.

The Hon'ble High Court in this case interpreted a different Act intended for a different purpose and the scheme of the Constitution was then fundamentally different from what it is to-day and as the High Court in that very case laid down that one of the leading rules of construction of a Statute is that among others, "they should be construed according to the intent" of the legislature which passed it and in case of any doubt arising from the terms employed by the legislature, the court is "to call in aid the ground and the cause of making the Statute". But the more appropriate decision on this subject is what was raised in Canada where the Federal Legislature had the power to pass legislation on "regulation of trade and commerce" and the question was, whether this provision came into conflict with the specific powers of the Provincial Legislature in Canada (Steam Insurance Company of Canada *versus* Parsons) (1). In that case the question was gone into by the Privy Council and it was held that though the words "Regulations of trade and commerce" in their unlimited sense are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade and commerce, "the words were not

(1) 7 Appeal Cases, 96.

used in this unlimited sense". The collocation of subjects of national and provincial concerns affords an indication that in conferring this power on the Federal Legislature, it could not have been intended that powers exclusively assigned to Provincial Legislature should be absorbed in those given to the Federal Legislature. "It could not have been the intention that a conflict should exist and in order to prevent such a result the two sections must be read together, and the language of one interpreted, and where necessary, modified by that of the other" so that it may be "possible to arrive at a reasonable and practical construction of the language of the section, so as to reconcile the respective powers they contain and give effect to all of them." It is, therefore, necessary even if it be argued that the particular item in the present case bears one literal meaning that the literal meaning of words should be read to restrict, if necessary, in order to afford scope for powers which are exclusively given to the Provincial Legislature, and it would be straining the expressions to their widest possible extent if it is held that the power to regulate vested in the Federal Legislation prohibits control of specific subjects by the provinces which is undoubtedly vested in them.

In any case, as the Speaker of this Assembly, I am anxious that our rights and powers should not be a whit less than what we have. It would be dangerous for the Speaker to throw out far-reaching provision of a very important Bill, unless he is fully satisfied, beyond any reasonable doubt, that the Bill is definitely outside the scope of our powers. That can only be ultimately settled in a court of law where issues are argued and discussed at length day after day, by eminent lawyers on both sides and from all points of view. The Speaker has not the advantage of hearing arguments on all the legal issues and technicalities. Discussions in Parliament are bound to be on political alignments and our rules of debates do not afford us opportunities to have discussions on any other plane, such as is necessary for a judicial decision on such points. We must, therefore, go by a *prima facie* case in our favour and the ultimate responsibility of law and its legal effect must be taken by those who are law-makers.

I hold that we have a *prima facie* case of legislative competency in our favour and this Assembly is competent to legislate on money-lending and to include banks, corporations or promissory notes in dealing with money-lending and money-lenders. I hope, my

views will not in any way be taken relating to the expediency or merits of the provisions of the Bill which is entirely for this House to decide. I may also note that my remarks are only about the general aspects of the Bill, for there are probably some provisions in the Bill which look as if we are trenching into regions where we have no right to go, notably about the method of keeping accounts by banks. I am not satisfied yet in my own mind as to whether this is in order, but we may discuss this later, as specific issues, when these provisions will be taken into consideration.

I may conclude by stating that after I had written this note of mine, I had an opportunity to go through a decision of the Madras High Court given only on the 7th February last on issues raised about the competency of a Provincial Legislature, a copy of which I received only last night. The Hon'ble Chief Justice of the Madras High Court in considering whether Madras Agricultural Relief Act was *intra vires* of a Provincial Legislature has also relied on most of the cases referred to in my note and has in addition referred to another case Channon *versus* Lower Mainland Dairy Products Board (1) in

(1) 1938, App. Cases, 708.

support. There is only one observation in the judgment of the Hon'ble High Court which is very pertinent for our present purpose, viz., "The power to deal with money-lending must carry with it a power to limit the amount to be recovered by the money-lender." I may conclude by stating that the Hon'ble Chief Justice in holding that the Madras Agriculturists Relief Act was *intra vires* of the Provincial Legislation observed as follows:—

> "The Court has, therefore, to look at the Madras Agriculturists Relief Act to see whether it is in substance within the express powers of the Provincial Legislature. If it is, it is not invalidated because incidentally it may affect matters which are within the Federal field."

That in a nutshell puts the case in favour of the Bengal Money-lenders Bill coming within the competency of the Provincial Legislature.

# INDEX

VOTING



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